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A TREATISE

TOLLS AND TOMS.

BY

CANTWELL, Esq.

SECOND EDITION,

WITH NOTES AND ADDITIONS.

BY W. C. M'DERMOTT, Esq.
BARRISTER AT LAW.

DUBLIN:
PRINTED FOR JOHN CUMMING,
16, LOWER ORMOND QUAY.

1829.

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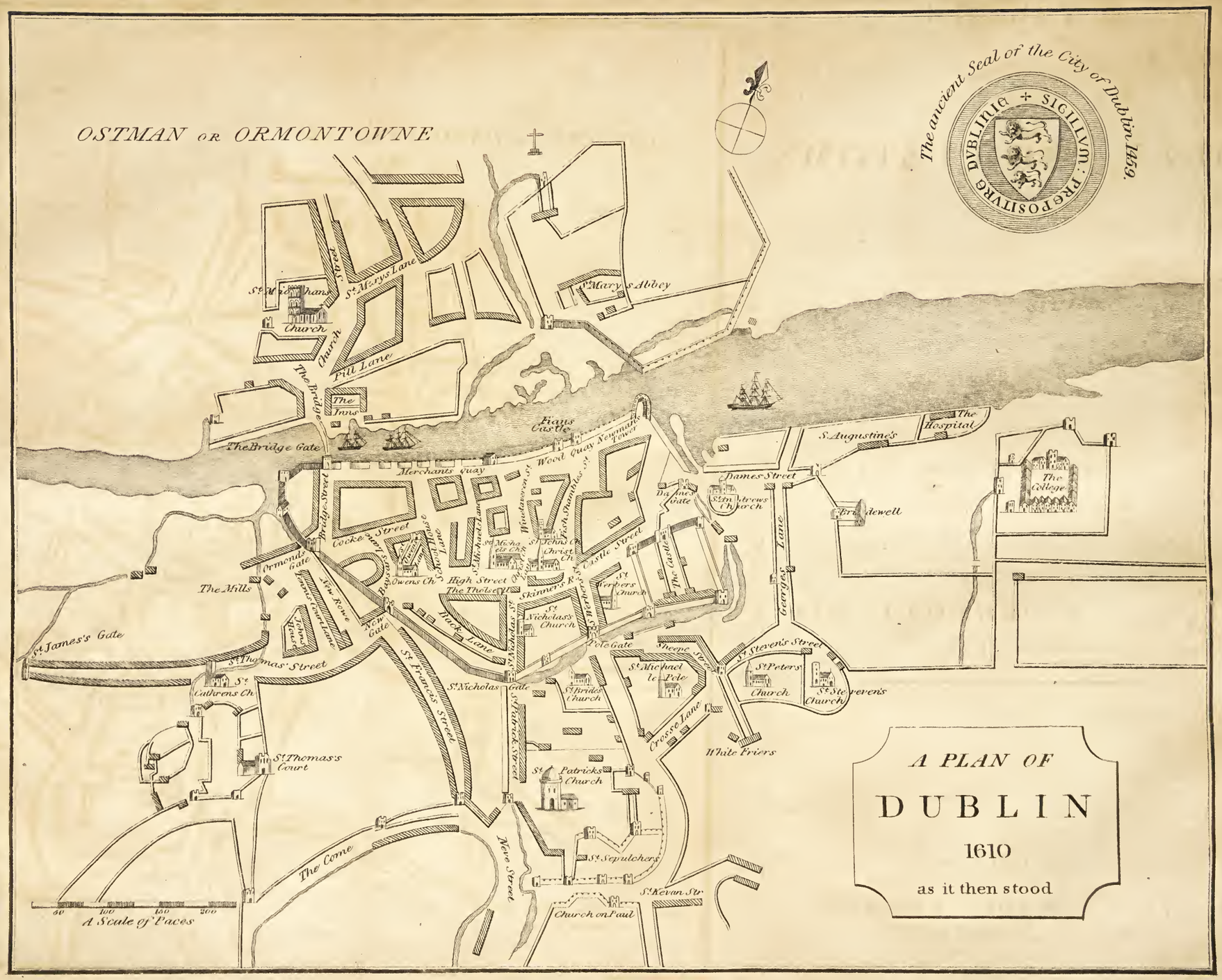
OSTMAN OR ORMONTOWNE
The ancient Seal of the City of Dublin 1459.
SIGILLVM PREPOSITVRE DVBLINIE
A PLAN OF
DUBLIN
1610
as it then stood
St Mary's Abbey
St Mary's Lane
Church
Pill Lane
The Bridge
The Inns
The Bridge Gate
Bridge Street
Fians Castle
Wood Quay
Merchants Quay
Newman's Tower
St Augustine's
The Hospital
James Street
The College
Bridewell
Cocke Street
Ormond's Gate
The Mills
New Rowe
Pearse Court Lane
Pearse Houses
Pearse Lane
Owens Ch
High Street
The Thelsel
St Michael le Ch
St John's Christ Ch
Fish Shambles
Castle Street
Dublin Gate
St Mathews Church
Skinner's Row
St Werbers Church
The Castle
St Nicholas's Church
Back Lane
Pole Gate
Werpe Street
St Steven's Street
St Peters Church
St Stevens Church
St James's Gate
St Thomas' Street
St Cathrens Ch
St Nicholas Gate
St Francis Street
St Brides Church
St Michael le Pole
Cresse Lane
White Friers
St Patrick Street
St Patricks Church
St Thomas's Court
The Cone
Nere Street
St Sepulchers
St Kevan Str
Church on Paul
Georges Lane
50 100 150 200
A Scale of Paces

A TREATISE

ON

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EDITOR'S PREFACE.

Sometime last month the Editor was called upon by the respectable Publisher to give a new edition of the present work, two copies of which being only in print: upon perusing the Treatise, it appeared to him so defective in point of system and style, that he preferred to write an original work on the subject: however, it was found that the time necessary for the completion of such a task, would not be suitable to the present demand of the public for some book on the popular question of *Tolls and Customs*, therefore, thus limited, he was of necessity bound to confine himself to an editorial duty.

The Editor thinks it the more necessary to say this much, to justify the liberty which he has taken with the text, particularly the first chapters; at the same time he by no means wishes to depreciate the merit of the late Mr. Cantwell; on the contrary, the original Treatise contains much valuable and important information, however deficient in form and other particulars; and it must not be forgotten that Mr. Cantwell's work first appeared in a series of Letters in a public newspaper, when the sole object on the

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mind of that gentleman was, to impress some leading facts on that of the public—a mode which rendered his Treatise unavoidably discursive.

The Editor, in tracing the law of Pontage, was naturally led to examine the right to Tolls on the Metal Bridge in the city of Dublin, which, being now for the first time brought into question, therefore was it deemed necessary to go at large into the legality of that right; and he must say, that the more he contemplates what he has advanced on this subject, the more is he convinced, not only of the illegality of the Toll there claimed, but the cruelty of its continuance.—It will be conceded that a Tax, no matter however small, falls the heaviest on that man who is the least able to pay it: but how much the more oppressive must such Tax be, when unsupported by either law or equity. We then ask, are there not several thousand persons in the city of Dublin this moment, not paupers, but of the useful, labouring classes, who are often without one halfpenny in their pockets, when out on their proper business. Is then a poor, industrious man, thus circumstanced, and going perhaps a considerable distance to work in the morning, to be sent half a mile out of his way, because he may happen not to have one halfpenny to pay Toll on the Metal Bridge, though by such loss of time he may lose a quarter of a day's pay: or, is a poor creature, too sadly fulfilling "the penalty of Adam," labouring under some heavy load to which his physical powers are unequal, but in a kind of contention against nature, making a desperate effort to earn a hungry pittance to sup-

port an existence to which his destiny has condemned him, is such a creature, we again ask, because he is unable to pay one halfpenny, to be cruelly and remorselessly turned round to the public bridges, while the corporation have no right, nor like to right, for the demand of the Toll on the bridge in question.

It is asserted in the text, that Tolls are not payable to the Corporation of the city of Dublin more than once in every twenty times they are demanded. But the Editor declares that *all* the Tolls collected at the Toll-houses are illegal *ab initio* :* also that the Tolls, properly so called, are not legally payable once in every hundred times they are demanded.—And should the time arrive, which indeed cannot be far distant, he trusts, he will be enabled to establish this opinion; the present not being the proper place for going into that question.

In saying this, he would wish it should be distinctly understood, that he feels no hostility whatever to those bodies who claim the right of Toll; on the contrary, he is an ardent admirer of corporate rights, *legitimately*, *justly*, and *honestly* exercised; feeling as he does the great and just influence which such bodies, properly constituted, are entitled to in public affairs, and these opinions he holds in common with every man not unacquainted with the early

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* The reader is requested to observe in the Synoptical Table, No. 1, Appendix, that the Tolls were at different times granted for limited and stated periods, all of which have expired these many years past.

history of modern Europe; for it will there be seen, that to corporate institutions Europe is indebted for the dawn of freedom—the diffusion of wealth—the manumission of both body and mind that characterised the first exertions of such establishments, breaking the shackles of a fierce and iron aristocracy, and making great and glorious inroads upon the prerogatives of despotism. Therefore he hopes, that when our unhappy differences shall cease, the corporations of Ireland, which the folly or madness of radicalism would wish to see dissolved, will imitate those worthy examples, and be found standing in the honourable medium between the licentiousness of the mob, and the two edged sword of prerogative.

GLOUCESTER-ST.
Dublin, April, 1829.

A TREATISE

ON

TOLLS AND CUSTOMS,

&c. &c.

CHAPTER I.

I SHALL not enter into any history of the nature of Tolls and Customs, but confine myself principally to the abuses now so extensively practised in this city, and also in the different fairs and corporate towns throughout Ireland.

In Cork, Waterford, Belfast, Tuam, and Wexford, the people resisted, with success, the claims made on them under pretence of Tolls; and at Naas, the impositions were annihilated at once, as must be fresh in the public recollection.

In Dublin, when actions for extortion have been brought against the Corporation and the Toll-farmers, who rent the Tolls under the Corporation, they have never contested the matter at law, but suffered judgment to go by default, in order to avoid the publicity of a trial. For the judges being so hostile to extortions, from the knowledge both of their illegality and mischievous effect, that the Toll-farmers would pay any amount in costs, sooner than let the opinion of the Bench come before the public, fully aware that the majority of their demands are illegal,

and that the people may resist such demands as are contrary to law.

About 26 years ago, a gentleman in the town of Banbridge near Belfast, by one determined exertion, put an end to that illegal practice of swearing persons leaving the fair. He went to a neighbouring magistrate to lodge examinations against the Tollman for tendering the oath to him. The magistrate at first refused to take his information, whereupon the gentleman spiritedly told the magistrate, that he would apply to the Court of King's Bench against him, for his having refused to take the information. This had the desired effect, the magistrate did his duty, took the examinations, and no attempt has been made in Banbridge to revive so pernicious a practice. It is to be hoped that the gentlemen through the country will follow this example, and put down the practice of Toll-swearing at fairs—it is subversive of the morality of the people, and totally destroys any reverence for an oath in those persons who are often sworn, leaving them liable to be perjured upon great as well as upon small occasions.

The practice of swearing persons at the different Toll-houses was also very general in Dublin, but has been nearly put a stop to, so that it is unnecessary here to say more upon it, than to apprize the Dublin and country Tollmen, and also the public, that the Tollman who administers any such oath, or any oath, is, under the Act of Parliament, 27 Geo. III. c. 15. s. 6, (made perpetual by 40 Geo. III. c. 96. s. 5,) liable to be prosecuted—the punishment is transportation for life; also the person to whom the oath is tendered, and who takes it, however ignorantly, is liable to transportation for seven years.

As many persons are ignorant of the nature and reason of swearing in fairs, I shall explain it. By law, cattle are not liable to toll, except sold; yet in nearly all the fairs through Ireland, a charge for Toll is made upon

cattle going into those fairs, and a further charge is made upon the cattle coming out, *if sold.* To ascertain, therefore, whether the cattle have been sold or not, the Tollmen take upon them to tender an oath to those persons who assert that the cattle which they are then driving out of the fair have not been sold. Many of the Tollmen who know the illegality of their conduct in tendering this oath, strive to evade the penalties in the following manner:—they throw the book upon the ground, the owner or driver of the cattle then swears. The Tollmen affect to consider such oath as voluntary on the part of the person who swears, and that thus they are not liable to the penalties attached to the offence of tendering unlawful oaths. This, however, is not the fact; for, upon a perusal of the Act of Parliament of 27 Geo. III. c. 15. s. 6, (in the Appendix,) it will be seen, "That any person not duly qualified by law to administer oaths, who shall administer, or cause to be administered, or tender or cause to be tendered to, or by threats, promises, persuasion, *or other undermeans, cause, induce, or procure to be taken,* by any person or persons, any unlawful oath, or solemn engagement, *upon a book or otherwise,* and being by due course of law thereof convicted, shall be adjudged guilty of felony, and may be transported for life."—Hence it is evident that the Tollmen cannot by such contrivance evade the penalties.

In Dublin the Tollmen were in the habit of swearing persons as to the lading on their cars. In James's-street Toll-house, it was customary to swear the men who brought up the bacon to Spitalfield's market as to the number of flitches on each car. This also exposes the Tollmen to the penalties of administering unlawful oaths, under the above recited Act.

The Tolls and market dues in this city have been for many years regularly increasing, but latterly have passed all bounds, Toll being charged to a great amount, when

from the nature of the goods it was evident none could be payable, such as upon *furniture*, *porter*, *flaxseed*, *cotton*, &c. &c.; and Toll has been charged three times over for the same goods upon one sale.

An ordinary consideration of the matter contained in this Treatise, will satisfy any person that Toll is not payable, in one case out of twenty, where now charged. The articles exempt from Toll are very numerous—provisions, &c. Many are exempt by particular Acts of Parliament, as linen, flax, &c.; and others in respect of the privilege of the party as being a clergyman, a freeman, a tenant in ancient demesne,* or the goods being for private use, or

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* Tenants in *ancient demesne* shall be quit of Toll for things bought and sold in fairs or markets; for *provision* for their *household* and *manure* for their land. By the custom of the realm they ought to be quit of Toll in every market, fair, or town, and upon that, every one of them may sue to have letters patent under the King's seal, to all mayors, bailiffs, &c. And also the tenants of *ancient demesne* may have a writ directed to the mayor or others, who will compel them to pay Toll, that they suffer them to go quit, &c. F. N. B. And *tenants at will* within *ancient demesne* shall be discharged of Toll, as well as of *free tenants*, or *tenants for life*, or *years of lands in ancient demesne*, shall be discharged of Toll for their goods, F. N. B. 228 (D.) cites 9 H. 6. 14.

There are conflicting opinions on this privilege of tenants in *ancient demesne*; some asserting that their privilege of passing Toll-free extends to all goods and merchandize: while other authorities limit the privilege to *provisions of their household* and *manure* for their land.

In England, where so much attention is paid to the agricultural interests, manure is made Toll-free on passing through turnpike, and this exemption is not only sanctioned by the *common law*, but by several Acts of Parliament, and chiefly by 53 G. 3. c. 82, and 57 G. 3. c. 37. Perhaps it may be necessary to observe, that the English editor of that volume containing the statutes of the year 1817, says, that the above two Acts extend to the United Kingdom; but this is an oversight, as the 4th sec. of 53 G. 3. c. 82 limits the operation of that Act to *England*, and the 57 G. 3. c. 37 is merely explanatory of the former. *Lime*, when used as a *manure*, is also Toll-free in England, by 4 G. 4. c. 16, which declares, that no collectors at turnpike gates shall take Toll for lime when intended for the improvement of land, unless authorized by some local Act of Parliament. This subject is worthy the attention of the Legislature, particularly when it is considered that Ireland is almost exclusively an agricultural country.

brought *for private* use.—*All furniture* is exempt from Toll, although hitherto charged both on going out and coming in; besides which, there may be many other causes for exemption; for these cases of exemption here instanced, legal authorities are given in the body of the Work, or referred to in the Appendix.

Many persons erroneously conceived that the Tollmen were armed with an authority which it would not be safe to resist.—This delusion was industriously kept up, in order to impress the people with a dread of resisting on the spot, for they well knew that the people, when once the Toll was paid, would never trouble themselves more about it.

Persons who bring up the mountain cattle to Dublin for sale, declare that they have frequently paid Toll twenty times over for the same cattle before they were sold; although by Act of IV. Anne, c. 8. s. 3, they are not liable to pay until after they had been sold.

Toll to a great amount is still charged in Dublin upon goods *for private use*, both coming into the city and going out, which is contrary to law; nay more, it is also contrary to the very terms under which the Tolls are set to the present tenants, who were publicly informed at the setting, "*That all goods for private use in and out, were free from Toll.*"

The late decisions, and the complaints which have been lodged in the Police Offices against the Toll-gatherers, for their extortion and misconduct, have, in a great measure, intimidated them. Much, however, remains to be done in removing both the exaction itself, and the outrageous manner of enforcing it; and one object of this Publication is, to render the subject so intelligible to all persons, that the present extortions shall not be suffered to recur at a future day. For, originally, they were submitted to from ignorance, and at last became a settled imposition.

CHAPTER II.

By the 4th of Anne, c. 8, no Toll is chargeable upon goods, cattle, or merchandize carried into or through any city, town, or place, where the same shall not be sold, consumed, or slaughtered. This Act repealed all Toll *thorough*; and by third section of the same Act, cattle unsold may be carried out of any fair or market without paying any Toll whatever. The Act exempts from Toll, all goods not *sold*, *consumed*, or *slaughtered* in any city or place where Toll is claimed; therefore corn, cattle, provisions, or goods brought to Dublin for the purpose of exportation, are not liable to Toll. This Act inflicts a penalty of 10*s.* for the first offence, and for every subsequent offence, a penalty of £5.

Some time ago coals imported for private use were charged Toll in passing through the town of Dundalk. This was illegal.

All goods coming to Kevin-street markets, which are within the liberties of the city of Dublin, though passing through that city, are by 4th Anne, c. 8, as well as the 25th Hen. VI. c. 3, free from Toll either in or out.

The Act, 25th Hen. VI. c. 3, appoints where Toll is to be taken—viz. *within the city*, and gives a penalty of 20*s.* for each penny illegally taken for Toll. Consequently Toll taken *outside* the city of Dublin, under the authority of the Corporation of that city, is illegal.

By the Act 3d Ed. I. c. 31,* the extortions, which are

* Which enacts "that touching them that take *outrageous* Toll against the common usage of the realm in market towns, and if any do so in the king's own town, which is let in fee-farm, the king shall seize into his own hand the franchise of the market."—Lord Coke, commenting on this statute, says, that

the subject of this Treatise, amount to the forfeiture of the right of Tolls; so that it appears, from an authority in Viner's Ab., that the city, by the misconduct of the Toll-gatherers, have lost altogether the right of Toll.

"*Goods for private use*" are exempt from Toll by the docket of the Corporation of the city of Dublin, and it has been decided "*that things bought by any person for his own private use, no Toll shall be paid.—Viner's Ab. Tit. Toll, cites* 28 *Ass.* 50. *Br. Toll, pl. cites S. C. p. Thorp, Green and Seton for Law.*" Hence it is manifest, that Toll *before* sale, is unreasonable, the sale being the standard to prove whether the goods were bought for public or private use; for it has been decided, *that goods sold by sample are not liable to Toll.* (Moseley v. Pierson, 4 Durnford and East, 104.—See Appendix.*)

The Judges' opinion in Moseley's case, and the arguments of the lawyers on both sides, clearly shew that goods sold by sample were not liable to Toll, in as much as the

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outrageous Toll "is where a *reasonable* Toll is due, and excessive Toll is taken, or where *no Toll at all* is due, and yet Toll is unjustly usurped."—2 Inst. 222.

* Independent of the case of Moseley *v.* Pierson, it has been clearly decided in the case of Hill *v.* Smith, that a prescription for Toll, in respect to goods sold by *sample* in a market, and afterwards brought into a city to be delivered, cannot be supported.—4 Taunton, 520.—(See Appendix.) And further, that such sale by sample, is not, in legal effect, a *sale by bulk*, has been ruled, after the most elaborate arguments, in the case of the *Bailiffs, Burgesses, and Commonalty of the Borough of Tewkesbury* v. *Diston.* The latter was an action on the case, by the owners of a market, who had a prescriptive right of Toll on all corn brought into the market to be sold, and there sold on a market day, but in which of late it had become the practice to sell by sample, and upon which sale by sample they had claimed the like Toll for corn sold in the market. Held, that where A bought of B in the market, by *sample*, to be delivered in the borough, A knowing B not to be a freeman exempt from Toll, and the corn not to have been in the market, and the Toll not to have been paid, and which corn was the next day delivered, the corporation could not maintain a case against A for such sale, in fraud of the Toll. Held also, that such sale by sample, is not evidence of a sale by bulk, upon a count for purchasing corn in the market in bulk, and not paying the Toll.—See Appendix.

goods must be actually in the market ready to be delivered to the purchaser; and this flows from the circumstance, that Toll is always payable by the buyers, and not by the seller,* and then only on the actual delivery of the goods. Now if the goods are not actually in the market at the time of sale, they cannot be delivered; yet Toll is charged in Dublin upon corn *sold by sample;* and further, if the person who buys this corn, &c., so sold by sample, lives outside the city, a further exaction was, until lately, made; Toll was charged *again* upon the going out.—And should the mills where the buyer has his corn ground be so placed, as that the corn must pass through the city on its way to the mills, Toll was again demanded. This last charge was insisted on by the Toll-gatherers as pertinaciously as the first, although all Toll on goods passing through, is abolished by the 4th Anne, c. 8.

The demand of Toll upon corn, &c. *going out*, has recommenced; however it is nearly abolished, as many now refuse to pay it, and those who pay, do it through ignorance. Many instances have occurred, of loss, far beyond the mere value of the Toll, to the persons who have their goods delayed at the Toll-houses disputing about this last-mentioned imposition. On the ignorant country-people the imposition now falls heavily, for the well-informed refuse to pay.

The claim of Toll upon corn *sold by sample*, is now generally resisted, and will soon be done away.—Also, corn intended for exportation, by 4th Anne, c. 8., is free from Toll, even though it should be warehoused in the city of Dublin.

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* In Hill and Smith, it appeared to be a matter of some doubt, whether Toll for goods sold in market can be due from the seller.—And 2 Inst. 221, says "De communi Jure, no Toll shall be paid for things brought to the market *unless they be sold*, and then, Toll to be taken of the buyer."—Again, "the buyer shall pay Toll, and *not* the seller."—Br. Toll. pl. 2. cites 9 Hen. 6. 45.

Toll is only payable upon corn in the market and upon market days; yet Toll is charged in all places and on all days, when coming into the city of Dublin; and until lately Toll was again charged upon the corn going out.

Freemen of the city of Dublin are by the charter of King John, and subsequent charters, free from all Customs, Tolls, &c. &c. through this city, the kingdom of Ireland, and all his Majesty's dominions; and also from passing ferries, bridges, &c.; and it is said that this exemption is confirmed by a recent decision on an appeal to the House of Lords on the subject of Tolls.—The Freemen, nevertheless, were charged Toll, and when they claimed the exemption, were told "they were free from Custom,* but not from Toll," but on viewing the charter it will appear otherwise. And it was said that Freemen were exempted from the payment of Toll, on goods coming in for their own private use, but not otherwise. Were this the case, a freeman would have no privilege above others.

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* Custom and Toll are now correlative terms; though certainly the ancient jurisconsults took a distinction between these two terms, as appears from the following dictum: "A man, by law, shall not pay *Toll* for any thing brought to a fair or market, but for things sold; but, by *custom*, he may pay for every thing brought to the fair.Br.—Toll. pl. 9 H. 6. 45." Were I to hazard an opinion, I would take the distinction to be thus:—Toll is a tribute either fixed and regulated by mutual agreement between the owner of a fair or market and the public, or settled by statutory enactment: while custom is of a more arbitrary nature, being a tribute demanded by the owner of a fair or market, and complied with by the public for a long time. And yet, perhaps, this distinction is too subtle; certainly the two terms are now indiscriminately used to convey the one idea; and the popular acceptation which, after all, is the best standard to settle philological differences, does not sanction any modern distinction.

Perhaps it may be necessary here to state, that, legally speaking, there is also a distinction between *custom* and *prescription*, as where an individual has enjoyed a right, time out of mind, without being able to trace the origin or foundation of his right, a grant is presumed, and the right must therefore be claimed by *prescription;* but when the claim depends upon a general rule of property within certain limits, it must be alleged as a *custom*, or *lex loci*. Clarkeson *v.* Woodhouse, 5 T. R. 412, n. (a.)—See Appendix.

Now, the charter evidently meant to give him a valuable privilege in this exemption, an exemption which specifies both Toll and Custom.

The first charter was granted by King Henry 2. But the most important was that which was granted by King John, in the 3d year of his reign, from which the following is an extract:

CHARTER OF JOHN, LORD OF IRELAND.	CHARTA JOHANNIS DOM. HIB.
And that they (Freemen) shall be quit from Toll, and Lastage, and Passage, and Pontage, and all other Customs through the whole Land and Realm.	*Et quod sint quieti de Theolonio et Lastagio, et Passagio, et Pontagio, et de omnibus aliis Consuetudinibus per totam terram et potestatem meam.*

Another charter was granted by King Edward, in the 8th year of his reign, from which the following is an extract:—

EDWARD, &c.	EDWARDUS, &c.
That they and their said heirs and successors for ever be free from Murage, Pavage, Pontage, Passage, Keyage, and from all such other like Customs of all Merchandizes, and of all their goods of what kind soever, throughout our Kingdom, our Land of Ireland, and our dominions.*	*Quod ipsi hæredes et successores sui prædicti imperpetuum sint quieti de Muraragio, Pavagio, Pontagio, Passagio, Kaiagio; ac, de omnibus aliis, hujus modi consuetudinibus de mercimoniis rebus et bonis suis quibuscunque; per totum regnum nostrum ac terram Hiberniæ et potestatem nostram.*

The exemption of freemen from Toll is clearly estab-

* Dr. Lucas considers this exemption to extend "as well of England as of Ireland."

lished by the case of "The mayor and commonalty, and citizens of the city of London *v.* the mayor and burgesses of the borough of Lynn Regis, commonly called King's Lynn, in the county of Norfolk," 1 Bos. and Puller, 487, decided upon an appeal to the House of Lords in England. This is a case strictly in point with the case of the citizens of Dublin. and establishes the right of their being exempted from Toll.—See Appendix.

The above case is analogous to the case of the citizens of Dublin, and goes a great way in establishing the exemption.

When this is generally known, there will, it is to be presumed, be no more charge of Toll upon a freeman; the aggregate amount of Tollage upon this class of the community is now considerable.

The docket-sheet posted up in the Toll-houses shews that freemen are not liable, and if every person who is charged would inspect that Toll-sheet, a great deal of useful information would be had, for in most cases there is an over-charge, even where Toll is payable; "for Toll is not payable once out of twenty times that it is demanded."

Every freeman should apply for a copy of the Toll-sheet, as in it is contained the declaration of all his goods being exempt from Toll; it is his right, and if he compromises that right, it is his own fault. From time to time the freemen are learning that they are exempt by the charter from all Tolls, and so refuse to pay; but many are still ignorant of the fact of their exemption, and those persons are charged.

This point has been already decided in Dublin, that a freeman not only has a right to inspect a Toll-sheet, but he has even the right to inspect the charters themselves, as Dr. Lucas sufficiently proved; the Dr. was a freeman, and wished much to support (if possible) the credit of the corporation, and to maintain the rights of the freemen. He wished to inspect the charters. The aldermen, alarm-

ed at his interference, refused to let him see the charters. He insisted upon permission, persevered, and showing that they were obliged by law, compelled them to produce them. He inspected them, and thus detected and exposed a vast deal of the iniquity of the aldermen of his time.

I hope the freemen will avail themselves of this information, and compel the aldermen to produce the charters; they can compel them if they please, and it will serve both themselves and the Public.

Several charters* and letters patent have been granted to the city, during different reigns, among which are the following, viz:—

Henry II. May 15th, 1193.

John, 2d November, 2d year of his reign.

Ditto, 11th July, 10th year of his reign.

Edw.

Edw.

Ric. II.

H. III.

H. IV.

Hen. V. Feb. 6th, 17th year of his reign.

Hen. VI.

Edw. II. Sep. 8th, 1317.

Edw. III. 5th May, 1336.

James I.

Charles II. 4th September, 1676.

James II. 27th October, 1686.

Letters Patent of Edward, 14th August, 12th year of his reign.

Ditto, of Edward III. 26th September, 37th year of his reign.

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* In the Appendix to this edition, the Editor has supplied a curious, and he trusts, a useful synoptical table of the charters granted to the city of Dublin respecting Tolls.—See Synoptical Table, No. 1.

Toll thorough is abolished by Act of Parliament, 4th Anne, c. 8.* I shall explain the nature of Toll thorough, and the effect of said Act. Thus, if a man has goods brought to town by the Royal Canal, which is in the county, and that he lives out of the city of Dublin, though within the circular road, the goods passing through Dublin are not liable to Toll coming in or going out. If he lived, for instance, in Cavendish-row, Mountjoy-square, Camden-street, Prussia-street, the Liberties, that part of Bishop-street, Britain-street, and Summer-hill, North Great George's-street, &c. &c., which are in the county of Dublin, and out of the jurisdiction of the city, in such case his goods are not liable to pay Toll. Any man who pays Toll should consider this, for he may be exempt, though his next door neighbour should be liable.—See Trueman *v.* Walgham and Key, in the Appendix.

Until lately the utmost ignorance prevailed as to Tolls; and the public, without inquiry, paid for every thing, and to whatever amount the Tollmen chose to demand, Brewers, until lately, regularly paid for their porter and ale, going out of town, 3*d.* each hogshead, making generally 1*s.* for each dray. Now, supposing them liable to Toll going out, (which I positively deny,) what can the amount of that Toll be? only, "3*d.* for every car load of merchants' goods not herein particularly specified, being the property of one person;" thus, if the Tollmen be entitled to any thing, their own docket-sheet limits the amount to 3*d.* But the docket-sheet itself shews that they

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* It would not appear to be so abolished in England, for in a case in 4 Taunton, it is stated, that a claim of Toll thorough cannot be supported without shewing a beneficial consideration moving to the person of whom it is claimed.

Besides *Toll-thorough*, there is another species of Toll called *Toll-traverse*, which is, when a man pays certain Toll for passing over the soil of another man in a way, not a high street.—(See Smith and Shepperd's case, Cro. Eliz.) And yet it is said that the owner cannot justify the taking, unless such Toll has been used to be taken *time out of mind*. *Fitz. tit. Toll. Viner. V.* VIII.

are not, so far as regards the brewers, entitled to any thing going out. It has this charge,

"Every barrel of ale *coming in*, brewed without the city or liberties adjoining, *2d.*"

This specifies clearly upon what they are entitled to Toll, *Ale coming in.* Now it would be hardly possible to comprehend porter going out, by the words *ale coming in.*

Bran and hay-seed had never been charged Toll until within these few years; neither are liable to any Toll whatever; nor is there any charge in the docket for either bran or hay-seed; and when any one refuses to pay for them, the Tollmen suffer him to pass without enforcing this demand.

Nothing but an express grant will entitle the corporation to take Toll, and that, no custom will justify them in. I wish to call the attention of the public to this point particularly, as many conceive that Toll may be payable from *long usage*, and so become payable by custom. This is not the fact; no custom will justify Toll, and the person acting according to such custom would be liable to indictment for extortion, and to a civil action for the injury. See the case of Halloway *v.* Smith, 2 Strange, 1171, where a fair was granted so long ago as the time of Queen Elizabeth, and it was there held, "that Toll was not incident to a fair, and that no custom would warrant the demand." See Appendix.

There are many cases to the same effect, all establishing the same doctrine, that Toll cannot be claimed by custom. Now I aver, that one-twentieth of the items specified in the Toll-sheet, are not contained in the charter, and suggest the propriety of going to the city archives to inspect the charters of the city. The corporation is bound to produce them to the public; but should they refuse, a magistrate's summons for any claim of Toll would bring the entire to public view—also, at the roll's office, or auditor general's office, the charters are to be seen enrolled.

The goods, tents, &c. going out to, and returning from the fair of Donnybrook, are charged Toll on passing the Toll-house, notwithstanding that the *fair green of Donnybrook is within the city.**

Every thing brought there by the persons having tents, &c. used to be regularly charged most exorbitant Toll. Now this charge was liable to two solid objections: 1st, the goods were going out. Even if the fair green, their ultimate destination, was in the county; and as no goods going out are by law liable to Toll, these goods were exempt.

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* This must mean within the jurisdiction of the city, for we are informed by one of the best historians of *ancient* Dublin, "that the walls of the city, including those of the castle, in their largest extent, did not take up an Irish mile."—And, as to *modern* Dublin, we are aware that its greatest limits do not extend beyond the precincts of the Circular-road. However, should it be insisted upon, that the fair green is within the city of Dublin, then Clontarf, Cabragh, Finglass, &c., *are also within the city*:—a construction, fatal, at once, to the proposition several times advanced in the text, that Tolls are only payable within the city, a construction which the corporation would not feel disposed to gainsay, for then, instead of having a Toll-house at Ballybough-bridge, that body would soon erect one at Clontarf, were the latter village within the city of Dublin. But in point of fact, Donnybrook fair green is *within the jurisdiction* of the city, though in the county, and this is manifest by a perusal of the charters of John and Richard 2d. As the charter of Richard is more special, in this respect, than that of John, therefore, for the satisfaction of the English reader, I shall here translate so much of the former document as applies to this subject: It is an inspeximus of Ric. II., entitled *De metis libertatum per novam inquisitionem.*

"Richard, by the grace of God, &c.—It has been shewn unto us, on the "part of the mayor and community of the city of Dublin, &c., and the jurors, "upon their oaths, say *that the bounds of the city of Dublin* are on the east part "of Dublin, and on the south part thereof, namely, the pasture leading to the "gate of St. Kevin, and so by the road as far as Kilmerecarigan, and from "thence, as they are divided from the lands of *Donobrooge to the Dodder*, and "from the Dodder to the sea, namely to Clarada, near the sea, and from, &c. "&c." See Appendix.

The form of riding the franchises, which also establishes the same fact, may be seen in the white book of Christ Church, Dublin, and also in the late Mr. Scriven's M. S. collections.

2d. The place to which they were going is in the city the Toll-farmers themselves could lay no claim to Toll, but finding the people ignorant and timid, they took advantage of it, and made them pay.

The amount received at the Toll-house upon the goods going out to Donnybrook, and upon the goods returning at the end of the fair, is almost incredible, it exceeded £160. This will be another considerable deduction of the profits of the Tolls.

It is a curious fact, that at all the Toll-houses the prices vary in proportion to the general state of ignorance of the persons who usually pass that way; and this is shewn at the Toll-house at Donnybrook in a number of instances: 1st, lambs are charged there one halfpenny a piece for the county Wicklow lambs mostly come in that road. At Dorset-street, &c. Toll-houses, lambs are only charged one farthing a piece, which is the sum specified in the docket. 2ndly, flaxseed is charged at Donnybrook Toll-house, and at James's-street Toll-house, 3*d.* per hogshead, while in Dorset-street and Constitution-hill Toll-houses, nothing is charged upon flaxseed.

Pigs are charged one penny each at all the Toll-houses, although in the docket only liable to one halfpenny each, and sucking pigs to one farthing each.

Calves are often charged one penny, although only liable to one halfpenny each.

The Tollmen know each person who is in the habit of passing in and out, and if they find an individual likely to submit, they increase their demand (suppose on fowl); and when the person asks the reason of being charged this week double what he was charged the last week, he is told, "That the Tolls are raised." Thus, at Donnybrook Toll-house they charge for every dozen of fowl on a car 2*d*, frequently up to 2*s.* 6*d.*; *whereas a whole car-load of fowl is only* 3*d.* if it contained twenty dozen, and a *single dozen* of fowl is only 1*d.*:—under a dozen—nothing.

But the most leading and prominent fact is, the people paying for goods going to Kevin-street markets, where neither hay, straw, corn, eggs, butter, potatoes, charcoal, calves, nor any thing else going to Kevin-street markets, are liable to Toll. These markets are in the county of Dublin.

The lord mayor is bound, by the Act of Parliament, 1st Geo. III. c. 25,* under a penalty of ten pounds, to post up the schedule of the Tolls, in some *conspicuous part of the market-house or market-houses*, on every market day, for one month next ensuing every Michaelmas-day But no lord mayor has ever complied with that Act; so that, as to any benefit to the public, it is a mere dead letter. It is to be hoped the public will not suffer it to remain so.

A copy of it is, by a printed board, affixed on each Toll-house, announced to be hung up in each Toll-house for the public inspection, but it frequently happens at the different Toll-houses, that when a poor man requires to see it, the Toll-man refuses to let him look at it. This occurred at the Toll-houses on Donnybrook road, and in Lower Dorset-street.

The docket should be posted where the Act requires, "in a conspicuous part of the market-house," and not in the Toll-house, liable to the insolent refusal of the Toll-men, who would, most likely, refuse to shew that, which on the spot could convict themselves of extortion.

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* In the year 1817 an Act was passed for the better regulating the collection of Tolls throughout Ireland, the abstract of which is, that boards, specifying Tolls, shall be erected at fairs, markets, and ports in Ireland, 57 G. III. c. 108. § 1—penalty 40*s*. On levying Tolls without erecting such boards, § 2—penalty 5*l*. On forceably removing such Toll boards, § 4. Penalties recoverable before two J. P. by distress, § 5. Appeal to quarter sessions, § 6. Schedules of Tolls to be delivered to the clerk of the peace, § 7. Clerk of the peace to keep a registry of such schedules, and to give a certificate of registry, § 8. Act not to alter rights, &c. of persons claiming Tolls, § 9.

If posted where the Act requires, every person whom it concerns would be induced to examine it, and thus lead to the detection of many abuses.

The circumstance of the Act so requiring the docket to be hung up in the *market-house*, is a clear proof that the legislature considered the Toll as payable *in the market, and on market days*, as declared by the votes of the Irish House of Commons to be the only lawful place and time to collect Toll.

The Toll on corn comes in the year to a great sum, although not a quarter of what was paid heretofore. The corn-dealers, factors, &c. are a large and wealthy body, and a very trifling exertion on their part would curtail the imposition to about a twentieth of what is now paid.

CHAPTER III.

It should be remembered, that previous to 1814 the only Toll payable upon hay and straw was one farthing upon each load, payable at the Toll-house, and one halfpenny payable at Smithfield; the two charges amounting to three farthings, were, however, received at the Toll-house, and here is a convincing proof how strenuously every innovation and attempt at imposition should be resisted. For the public paying the halfpenny for Smithfield, at the Toll-house, it was regularly charged upon hay coming into Dublin, whether going to Smithfield or not, and the public lost sight of the distinction. This charge of the three farthings therefore became an established charge, and hay and straw coming in on market days were charged, though *not going to Smithfield.* What followed? The three farthings having thus become established, a new scheme was struck out, which is well known. The cars were weighed, and charged 2*s.* 6*d.* for weighing, being a gross extortion, which the farmer could then resist, and might still dispute. They were also charged 1*d.* for the number marked on the cars and carts, and they are now charged the three farthings at the Toll-house, and one halfpenny per cwt. for weighing. At first the charge was only one farthing per cwt.; but having submitted to the imposition of the farthing, it was conceived they would not resist paying the halfpenny per cwt. All these charges are illegal, and the persons who inforce them are liable to severe penalties.

This system, it has been said, has produced nearly 2600*l.* a year. The weighing and numbering of 4000 cars, at 2*s.* 7*d.* each, came to 512*l.* 10*s.* 0*d.*, all out of the far-

mers' pockets, and that too at a time when the whole produce was not sufficient to pay the rent, exclusive of Tithes, Tolls Labour, &c.

All the legal demand for Toll on hay, is, viz.—*one farthing each load at the gates, and one halfpenny in Smithfield, making in all three farthings.* The farmer should pay no more, for there is no authority whatever to raise the dues of the markets under any pretence whatever.

In the markets for the sale of potatoes, fowl, eggs, butter, and fruit, very great impositions are practised.

Potatoes, by the Act 25 Geo. II. c. 15, are to be weighed *gratis*—yet 3*d.* each sack is charged for weighing them. On the quays, 7*s.* 7*d.* is charged on each potatoe boat for the use of a beam and scales, and 5*d.* per ton for seeing them weighed, which is contrary to said Act.

A few years ago only 1*d.* the sack was charged for weighing, and even that 1*d.* was an imposition; for the Act expressly says, that "*potatoes shall be weighed without fee or reward.*"—See Appendix.

The butter Act, 52 Geo. III. c. 134. s. 17, limits the charge for weighing butter at the cranes; the overcharge there is to a very great extent, and very well deserves the exporters' attention.—See Appendix.

In the poultry and egg markets the higglers are charged 1*d.* per hundred in number for the standing, and 1*d.* per dozen for fowl. These charges are illegal, and create a forfeiture of the market, for *(King* v. *Burdett)* the market must be free and open, without payment of any thing for the standing;* and actually there is no charge in the docket, save for

"*Every standing for fowl, per week, 2d.*"

But this charge does not apply to the country people who bring their fowl to market—they are not liable to pay

* But it must be understood, that if there are *stalls* or *sheds* erected in the market, there is a Toll-duty on such, called *stallage.* See p. 23.

any thing. The countrymen declare, that, but for the combinations which exist between the chicken-butchers, the fore-stallers, and the factors, fowls would be sold for half their present price.

It is right, therefore, to inform the public that every man is at liberty to sell his own goods, and the preventing him from so doing, by any means whatsoever, or the doing of any thing else by which the price of provisions may be raised, is an indictable offence, and the punishment is fine and imprisonment, at the discretion of the court.—One person in the city of Dublin was, a few years ago, found guilty, fined and imprisoned for forestalling potatoes. *The countrymen are entirely ignorant of their right to sell their own goods.* The factors take advantage of this ignorance for their own advantage, and prevent them from selling their potatoes in any other manner than through the factors, who encourage forestallers, and each, conscious of the illegality of his conduct, connives at the extortion and misconduct of the other.

Live fowl, though charged at the Toll-houses, are not liable to any Toll*, as will appear by the docket-sheet, and the only legal charge is for *dead fowl.*

In the butter-market, the charges now made for weighing are,

All drafts under 1 cwt.	-	-	3*d.*
Do. 1 cwt. and upwards,	-	-	4

It will be seen by the Act of 25 Geo. II. c. 15, in the Appendix, that the only legal charges are,

All drafts under 1 cwt.	-	-	$0\frac{1}{2}$
Do. 1 cwt. and upwards,	-	-	1

Yet for weighing bowls of 7 or 9lb. weight, 3*d.* each is charged.

In the fruit-market an extravagantly enormous imposi-

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* No Toll is due for *hens* or *geese*, or for any other things of such nature. Per. Clinch Trin. 36 Eliz. B. R. Escot *v.* Laureny. Viner ab. vol. viii.

tion is practised, as if the tenants of the markets, from the success of others in similar impositions, supposed that they might push theirs to any extent. The country people are now resolved to resist the payment of the present illegal charges, for neither the lord mayor, nor any other person, has any authority to increase the charges at the Toll-houses or the Market-houses, and therefore the present tenants have no authority to charge the sums above mentioned.

The items in the Toll-sheet published in the year 1763, under which the present tenant took the markets from the city, are as follow :—

For every car load of apples or other fruits,	2*d*
Every horse-load of ditto, - -	1
Every flasket of ditto, - -	0½

(Not exceeding the price of a car load.)

IN THE MARKETS.

For every car load of fruit, - -	2
Every kish load of ditto, - -	1
Every basket of ditto, - -	0½

No other charges are legal, and any person demanding more may be resisted; and the person who receives more may be indicted for extortion, and double the money paid recovered back.

Having thus mentioned the old established charges, I shall proceed with the *newly fabricated* docket :—

A LIST OF ILLEGAL CHARGES.

For every dozen noggins of raspberries,	1*d*
For every basket of currants, strawberries, or gooseberries,	1
For every kish of do. - - -	5
For every hand-basket of small fruit, -	0
For every clieve of do. - - -	1
For every second size do. - - -	1½

For every third do. - - -	2*d.*
For every kish of apples if more than one on a car,	3
For every car load of apples, - -	6
For every basket of nuts, - - -	1
For every clieve of do. - - -	3
For every basket of wall-fruit or hot-house Fruit	2
For every article not here enumerated, -	1

In addition to all these illegal charges, the persons who retail the fruit in the market are charged a weekly rent for their standings, some of them 2*s.* 6*d.* a week; this, or any other charge for a standing, is quite illegal, as the market must be open to every person to come and sell without payment of any thing, unless they use a stall or shed. These persons might resist the charge, might indict the owner of the market for extortion, and recover back double what they have paid. Nay more, if the owner of the market builds more stalls or sheds, that there is not sufficient room for the people to stand and sell their goods, and so they shall be compelled to use a stall, and the owner shall charge for such stall, the owner of the market is, in such a case, liable to be indicted for extortion.*

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* Information against B, farmer of Newgate market, for extortion, in taking divers sums of money of the market people for rent, for the use of the little stalls in the market, and divers great sums of money for fines, and was found guilty. It was held by the court of B. R. and by *Holt C. J.* at Guild-hall, that if the defendant erects several stalls, and does not leave sufficient room for the market people to stand and sell their wares, so that for want of room they are forced to hire the stalls of the defendant, the taking of money for the use of the stalls in such cases is *extortion.* But if the people have room enough clear to themselves, to come and sell their wares, but for their further conveniency they voluntarily hire those stalls of the defendant without any necessity compelling them, there is no extortion, though the defendant takes a rent and fine for the use of them. The law has not appointed any stalls for the market people, but only they shall have the liberty of the market, which the defendant does not abridge, having left them room enough besides the places where the stalls are set; and then if they will enjoy the convenience of the stalls, they must comply with the defendant's terms. Ld. Raym. R. 148, 149 Viner, Ab. Toll. vol. viii.

A distinction has been attempted by the Toll-farmers between "Toll and Custom," and by this the freemen, as above stated, were tricked into paying "Toll," but there is no difference whatever. "Toll" is a general word, and in the different law books and Acts of Parliament, is more frequently used than "Custom."

By the very Toll-sheet, (see Appendix,) raw hides, bark, Irish salt, iron, and all goods going to be manufactured, and the materials to be used therein, are exempt from Toll, though many pay through ignorance. Every person who pays Toll should keep an entry of the amount, the date, the servant's name, the name of the Toll-gatherer, and then, upon an investigation, he may recover back double the amount, with the penalties also; and in case of any inquiry being instituted by Parliament, such an entry may be of great service.

Till lately the brewers in the city of Dublin paid 3*d.* on each hogshead of porter, &c. going out; but in consequence of the public mind being directed to this subject they do not now pay any Toll whatsoever.

On the 3d of January, 1816, a trial took place in the cause of Shea against Beresford and Doyle, where 12*l.* damages were given for the stopping *goods going out* of the city.—See Appendix.

In that case it was proved, "That in the year 1809, a claim of Toll going out was made on a person who had sense and spirit to resist it. At the request of the Toll-farmers the matter was left to the arbitration of the recorder of the city of Dublin, who, after three days' examination of witnesses, and the most deliberate investigation of the subject, decided, *that the corporation were not entitled to it.*"

Toll first came to be charged upon corn going out in 1800, when considerable quantities of foreign grain being imported, the Toll-farmers demanded Toll on it going out. Some persons who knew the illegality of Toll being

charged on any goods *going out*, refused to pay, and threatened to proceed against the Toll-men for stopping their drays, upon which the Toll-farmers applied to them, and said they would suffer *their* corn to pass provided they would not give publicity to the illegality of this claim.

The persons who paid, however, never knew the distinction as to its being foreign or Irish grain, and they, erroneously conceiving that the Toll-farmers would not make an illegal charge, continued still to pay, whether the corn was foreign or not. Thus it continued until some person resisted in 1809, when, as before stated, the claim was left to the arbitration of the Recorder, the law officer of the corporation, and who is elected to his office by that body, who nevertheless decided against the claim of the city.—The amount of the Toll upon corn is very considerable.

Goods carried out by the different mail-coaches, day-coaches, and private carriages, are never charged Toll. The charge would be considered monstrous—yet if the same packages be sent out upon common cars or drays, they are charged. This is a manifest contradiction, for Toll is payable in respect of goods, not in respect of the mode of conveyance. Yet in the instance just put, the goods are charged Toll if carried by one conveyance, but not, if carried by another. The Toll-farmers say, "All goods are liable to pay on passing the gates in and out;" yet if carried by a day or stage-coach they are not charged; if carried by a car or cart they are charged.—Why are the stage-coaches allowed to pass? Because if such charges were attempted the proprietors would resist them, and the Toll-farmers know well that they could not force such demands, and exposure would follow.*

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* A man cannot justify for Toll of waggoners (Charettours,) &c., nor for Toll for *passing of men* by land or by water, unless by *usage* or *prescription;* and Thorp, (J.) said that a man cannot justify it *by grant of the King;* but he may

Waggoners, carriers, &c. are not liable to be charged any Toll. "*Fitz. Tit. Toll, pl. 2. cites Hill* 50. *Eliz.* 3," the charge upon goods going out would not be worth col-

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have Toll by the King's grant, of such as buy *in his fair or market.* Fitzh. tit. Toll. pl. 2. cites Hill 50. E. 3.

The above is the settled law respecting Toll on *waggoners;* but the doctrine raises a question of some moment to the citizens of Dublin, and that is, are Tolls on the METAL BRIDGE over the river Liffey legal? We think not, and our reasons for so thinking are the following.—The corporation of the city of Dublin, who claim the right of ferry over the river Liffey, within certain limits, if they are entitled at all to any dues from the public for crossing that river, must claim those dues either as for *pontage* or for *ferry*—as to murage or paviage, it is quite out of the case. Now, pontage is a Toll granted for maintaining or re-edifying bridges, and then comes the question, what is Toll itself? Lord Coke, who may be called the great pontiff of English law, says "Toll is a payment in *towns, markets,* and *fairs,* for *goods* bought and sold. It is a reasonable sum of money due to the owner of a *fair* or *market,* upon *things,* if tollable, within the fair or market, or for stallage, picage, (stakes driven in the earth to which the cattle are tyed or fastened) or the like." Hence then, Toll is a tax or tribute upon *goods* or *merchandize.*—Consequently, pontage is a Toll upon *goods* carried across a bridge: the tax being upon the *goods* or *merchandize,* but not upon "*men passing,*" and the case, as above cited from Fitzherbert, expressly says, "Nor for Toll for *passing of men* by land or by water, unless by *usage or prescription.*" Now, the taking of Toll on the Metal Bridge, has neither usage nor prescription to justify it; the bridge is not twelve years erected, and usage or prescription is a title acquired by long and immemorial custom, or, as the law quaintly expresses it, "*where the memory of man runneth not to the contrary,*"—therefore, upon the ground of usage and prescription, Toll upon the metal bridge for *the passing of men,* is evidently illegal. But the corporation may say, we have a charter.—As to charter, Justice Thorp, a profound lawyer, declared that Toll, for the *passing of men,* cannot be justified, even by a *grant of the King,* "though," says that judge, "he (the proprietor of the fair or market) may have Toll, by the King's grant, of such as *buy* in his fair or market:" here there is no market, and there is no grant but for pontage, which is a tribute payable on *goods* or *merchandize* crossing a bridge, similar to a duty payable on the like *goods and merchandize* in a fair or market; but pontage is not a poll tax on the *passing of men,* as the Toll-farmers of the metal bridge would have it thought. Thus, then, the Toll on the bridge in question, neither is supported by immemorial usage, nor by the claim of pontage. But should the latter be urged, still that right of pontage would fail, because a Toll on the *passing of men* must be *upheld* by *usage*

lecting, as almost all the goods which go out of Dublin are brought by the common carriers.

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and *prescription,* which prescription must be *ultra memoriam hominis.* We will not ask the question, is this bridge in existence, beyond the memory of man! !! hence the claim of Toll for the passing of men evidently fails on the right of pontage; being manifestly deficient in those two essential ingredients, namely *usage* and *prescription.* And as to ferry, it would be ludicrous to argue it—for we know that the Toll is on the *bridge* and *not* on the *ferry;* unless indeed, it would be hazarded, that a bridge is a *ferry;* perhaps it may be said that the Toll on the bridge is a substitute for a ferry, but this would rather weaken than strengthen the claims of the corporation, as that body must first change the nature of things before such an argument would be of any value.

Again—Viner, in his great work, speaking of Toll, says "And pontage, murage, or ferry, may be demanded in a highway by the King's grant, *but not in a private way.*" Now *murage* and *ferry* are quite out of the question; the walls of the city have long since been removed, and the ferry is also discontinued, therefore pontage is the only colourable claim for this tax, and upon pontage alone it must be defended.—Well then pontage, as it has been shewn, is a tax upon *goods* and *merchandize* carried over a bridge, but pontage is not a tax upon the *passing of men;* and finally, the bridge in question is a *private* way, being as it is, the *private property* of two private citizens, and which bridge may be removed by the corporation for improving the harbour of Dublin, on the latter's giving twelve months' notice to the proprietors of the bridge in question; a tolerable proof that the city, would not be safe in resisting the harbour corporation, when the latter may deem it necessary to remove this bridge: now when it is recollected with what pertinacity and perseverence in error, the city have from time to time shewn in establishing many of their illegal claims, is a fact bearing internal evidence, that the city has no right to erect that bridge, but still less, that they have any right whatever in exacting a poll tax from the public.

Indeed, the last mentioned case from Viner, puts the question out of all dispute, for it is there expressly laid down that "pontage, murage, or ferry, may be demanded in a *highway* by the King's grant, but not in a *private way,*" and we have shewn the bridge to be *private property,* therefore Toll is illegal; that the bridge is private property, and consequently a *private way,* there can be no doubt, so much so, that Messrs. Beresford and Walsh, even anterior to the operation of our present amended Criminal Law, could maintain, in their own names, an action, and obtain damages, for any malicious injury done to this bridge; and as to pontage, which has already been sufficiently shewn, is a tribute upon *goods and merchandizes,* but not a tax upon the *passing of men;* indeed any Toll, in any case, for the passing of men, can only be supported by custom or prescription, for even the king cannot grant a Toll for the *passing of men,*

Continuation of NOTE.

unless such grant be supported by *custom* or *prescription.* And we have shewn what this prescription is, namely, that it must exceed the memory of man.

Again, if it be insisted that this right to Toll is given by charter: this also we deny. The Charter certainly grants Pontage, but this must be such as the law recognizes, namely a tax upon *goods and merchandizes,* but by no means a tax upon the passing of men.

Indeed, so odious in the eye of the law is a tax upon the *passing of men,* when unsustained by usage or prescription, that such an imposition could not be legalized even by royal authority itself. And why? because a tax upon the passing of men is a direct tax upon population—an interdiction upon individuals going on their own proper business—a tribute upon the natural and personal liberty of the subject, in a word, a *poll-tax,* and who is there so ignorant as not to know the once fatal effects of a poll-tax.

But should it be asserted that the metal bridge stands outside the ancient walls of the city, (see map annexed,) those walls running no further eastward than *Newman's Tower,* which stood on the southern bank of the Liffey, where the north end of Parliament-street now stands, such an evasion can be of no value; but let us concede even that point, still the Toll on the *passing of men* would remain indefensible, while that Toll is unsanctioned by ancient usage or prescription.

Hence then, the taking of Toll upon the metal bridge is here submitted as illegal, unsupported as it is by charter, usage, or prescription.

So much for the law of the case; as to the *reasonableness* of paying for every passage across the bridge in question, and that for ever, is as objectionable as the demand is illegal. On viewing the synoptical table in the Appendix, No. 1. it will be seen, that the various royal grants which were made to the mayor and corporation of Dublin for *pontage,* (the only colourable claim for which this Toll can at all be demanded,) were granted for a given time: not so with ferry, which we own was granted for ever, but Toll for *pontage* was always limited to a time certain, and this for the wisest reason, that pontage, while it was given to a certain public body, merely for the better regulation of the matter, yet it was so given for the *public good exclusively,* and therefore limited in its operation, namely, until such time as the expenses for repairing or re-edifying the bridge for which the grant of pontage was given, were discharged; and then the public were to have the free and unrestricted enjoyment of the bridge, which was erected for the convenience and comfort of the community at large—but the corporation would have it thought, that the right of pontage was given, *not* for the public benefit, but as an unjust and partial monopoly to a few, over the interests and natural rights of the many. Now, if this is their opinion, it is but fair to ask that body how have they deserved such exclusive favour—what public works have they erected—what canals—what seminaries—what hospitals have they founded? in a word, how have they ornamented their native city; or by their charities, as corporated bodies

Continuation of NOTE.

in other countries, have limited the sphere of human suffering, and elevated the condition of man.—But what is the fact—it is well known that almost all the bridges which have been erected in Dublin in ancient times, were erected at the expense of the crown—and Stanihurst informs us that Queen Elizabeth, in 1598, at her own expense, repaired Bridge-Gate, which the corporation of Dublin suffered to fall into ruins, while that body were at the same time exacting Tolls for murage !

It is observable that, in almost all the Acts regulating the erection of bridges in England, that wherever Tolls are granted on those bridges, such Toll is very justly limited to a few years, until the original expense incurred in the erection is discharged, and that Toll is demanded on those bridges but once a day.—Under such regulations Deritend-bridge, *Birmingham*—Calton-bridge, *Edinburgh*—and many other bridges in Great Britain are managed ; if it be said that Londonderry-bridge is an exception; where there is a charge on every passing ; to this there are two answers—first, that the latter bridge is regulated by Act of Parliament —and next, that it is under the control of an *Irish corporation.* We say an Irish corporation, and to justify the remark let us compare the rate of Toll on an Irish bridge, and that which is levied on an English one.—We will take Londonderry and Birmingham bridges, as both these structures are not only regulated by Parliament, but also in the one and the same session of Parliament; therefore the comparison must be the fairer, as these bridges were not legislated for *at different* periods, when various causes might justly operate so as to produce a different rate of Tollage.

LONDONDERRY BRIDGE.

For every horse, gelding, mare, mule, or ass .	0*s.*	2*d.*
For every drove of oxen or neat-cattle, per score, and so in proportion for a greater or lesser quantity, .	3	4
For every calf, hog, pig, sheep, or lamb, .	0	1

BIRMINGHAM BRIDGE.

For every horse not drawing, . . .	0	1
For neat-cattle, by the score, . . .	0	10
For sheep, swine, and calves, per score, (at the rate of)	0	5

From the above it is evident that the Irish corporation charge in the article of horses twice as much as the English Toll-man, while the rate on neat-cattle, sheep, &c. at the Irish bridge, precisely quadruples the demand at Birmingham Toll-house, this while the latter is to continue but for a given time, and the former is to be held for ever.—And here it may be remarked, that the town of Birmingham possesses at least twelve times the wealth of the ancient city of Derry, and hence from the above rate of Tollage on the two bridges, there follows this plain and evident corollary, *that Tollage increases in proportion to the poverty of a people.*

Continuation of NOTE.

But the bridge of Dublin differs essentially from that of Derry, for by the 54 G. III. c. 230, (Loc. and Pers.) regulating the Tolls, &c. on the latter, the Act makes it imperative on the corporation of Londonderry to maintain "*a proper and substantial bridge,*" and more, that the trustees of Londonderry bridge should allocate £1,000 annually until £30,000 for the above purpose shall be funded. Now what guarantee have the public of the metropolis that "a proper and substantial bridge" shall be kept up, and they have yet to learn, what amount of the Tolls collected on the bridge in question has been set apart for so laudable a purpose?

From what has been here advanced, it is manifest that the Toll is *unreasonable,* and we have shewn that it is unsupported by charter, at the same time that it is illegal at common law.—But we now go further, and shall prove that the taking of Toll on the metal bridge is also *illegal by statute.* True it is, that by Act of Parliament, the owner of a ferry may erect a bridge instead thereof, and take the same Toll as for the ferry, (5 G. III. c. 14. § 18.—13 and 14 G. III. c. 32. § 20.—19 and 20 G. III. c. 22.—36 G. III. c. 55. § 57.—See Appendix). But this power given to owners of ferries is limited, for every one of the above Acts says, "Provided always, that nothing herein contained shall extend to *cities* and *towns corporate.*" And we know the bridge is within the city of Dublin!! So that in any point of view, whether by law—by charter—by common law—or by statute, *Toll on the metal bridge is illegal.*

We have adverted to the perseverence in error of the corporation from time to time, and as nothing is intended to be here advanced unsustained by fact, we instance the claim of *quarterage,* a claim of the most illegal and inequitable nature, and insisted on by the corporation with violence and audacity. Many are yet living who remember the contest between the public and the corporation on this head; to Lord Townsend, when chief governor of this country, the citizens of Dublin are indebted for their protection from that extortion. One instance more of such perseverence: several attempts have been made to insist on the exclusive right of ferry on that part of the river Liffey immediately opposite Stevens's hospital, and this is in direct opposition to the charter of Charles II.—*See* SYNOPTICAL TABLE, No. 1.

We here conclude, having considered this matter not only as an abstract question of law, but as private citizens; we deny not the convenience or utility of the structure under review, but we are opposed to the perpetuity of a Tax which on principle is illegal, unjust to the public in its mode of collection, and where the proprietors are not liable to that public for any responsibility.

CHAPTER IV.

MANY persons do not sell their cattle in Smithfield on the first day; the next day, when returning to market, they must pay Toll again, and so from day to day until they sell them. This is a serious imposition, but a single reading of the third section of the Act of Parliament, 4 Anne, c. 8, will expose the imposition. It establishes, *that no cattle remaining unsold, shall pay Toll.* This would be nonsense if it were lawful to take the Toll before the sale, and confirms, "That Toll is not payable until after the sale;" for until the market is over it would be impossible to know whether the cattle would remain unsold or not. Some graziers, however, do not now pay Toll on their cattle coming into Smithfield market.

All provisions for private use, no matter where bought, and though such provisions be delivered in Dublin, and pass through the Toll gates for that purpose, nevertheless they are not liable to Toll.—(See Votes of the House of Commons, in Appendix.)

Persons frequently bring goods up by the Royal Canal for export.—These are, by the operation of the Act, 4 Anne, c. 8, free from Toll.

In three cases out of four, of goods brought to Dublin by the Royal Canal, no Toll at all was legally payable, though frequently charged.—Therefore, it is important to those persons who trade upon the Royal Canal, to look narrowly into the matter, and should there be found any real discrepency between the legislative regulations respecting Toll on the Royal and Grand Canals, the matter should be set at rest by an appeal to the Legislature: both establishments were designed for a common purpose—the

improvement of the country at large, therefore they should both enjoy common privilege. The two clauses in the Acts of Parliament, as to the Grand and Royal Canals, are in the Appendix.*

A great part of Dublin, viz. Mountjoy-square, Cavendish-row, part of Great Britain-street, part of Harcourt-street, &c. &c., is in the county of Dublin, out of the jurisdiction of the city of Dublin; yet Toll is demanded upon goods coming by the Royal Canal and by cars, to persons residing in those streets, which are in the county; and many, ignorant of the distinction, pay, though by said Act, 4 Anne, c. 8, all goods going to such parts of Dublin are free from Toll.

The Toll charged upon goods going out and coming in, is, in the docket, called,† "Custom of the gates of the city of Dublin." Now on the north side of the city of Dublin there never were walls or gates, and consequently no Customs could originally have been paid on the north side for passing gates which did not exist. A claim of Toll for turnpike might as well be made upon the south side of Dublin, where no turnpikes now are, merely because turnpike is payable on the north side of the city. This is plain, and it is the duty of every individual, not only to consider, but seriously to oppose so manifest an imposition, an imposition which came to be submitted to in the following manner:

The Customs of the gates were originally charged at the very gates, and so were charged only on the south side of the city where those walls and gates were. At length

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* It is perhaps worthy of remark, that the favoured canal is on that side of the city, the south, upon which Tollage is legally demandable; and that the Act which establishes the Royal Canal provides for the rights of the corporation, though on that side of the metropolis, the north, where Tollage cannot be sustained by *charter*.

† This title of the docket "*Customs of the gates of the city of Dublin*" are the identical words of the charter of Charles II.—See Synoptical Table. No. 1.

the gates and walls were removed, but the corporation *did not remove their Toll;* and when they found the people submit to pay it, though walls no longer existed, they extended their imposition, and demanded the Toll on the north, as well as on the south side of the city. The public forgot the distinction.—Many paid because others paid; and so the imposition continued until the year 1662, when a petition was presented by certain persons to Parliament on the subject, and the committee to whom the petition was referred, reported as one of the grievances, "That the city of late charged Toll in all places within the jurisdiction of the city, *as well without as within the city;*" and this report was comfirmed by the whole House, who came to a resolution *that such was a grievance.*—(See Appendix.)

The corporation then submitted—Parliament made some regulations as to Toll, and the persons who presented that petition being no longer charged Toll, and having obtained redress for *themselves*, took no further trouble in the business; whereupon, after some time the corporation re-commenced their old extortions, until Parliament again interfered, and in 1703, voted their conduct to be a high misdemeanour, (see Appendix,) and followed up that vote by the Act of Anne, c. 8, so often relied on throughout this work; and indeed, if that Act was put in force, scarcely any imposition could be practised. This last vote and Act again brought back the corporation to their ancient limits, viz. *within the city.*

Yet after all, Toll is now charged both south and north, and even in the county Dublin.

The ancient bounds of the city walls are to be seen in a map* of Dublin in 1610, published for "Harris's Survey of Dublin," and is well worth the possession of all persons who pay Toll to the city of Dublin. For it is

* See the map adverted to, prefixed to the present edition.

well known that Trinity College, on the south side of the river, was always, and is still, described as being "*near Dublin;*" so that by the resolutions of the House of Commons, taking Toll so far as the College on the south side would be illegal, but they take Toll beyond Ball's-bridge. By establishing the above rule, namely, "That Toll is only payable at the very gates of the city," no toll would be payable on the north side, and so most of the goods by the Royal Canal would become free of Toll; and thus would the two canals be nearly upon an equal footing in respect to Toll.

By 11 and 12 Geo. III. c. 31. s. 29, all goods by the Grand Canal are exempt from Toll, either in or through Dublin, or in or through any other place; yet Toll is charged upon such goods, and a great quantity of the goods which come by the Grand Canal are made to pay Toll passing through the city when going out. This is grossly illegal—1st, It has already been shewn that Toll on goods *going* out is not chargeable, and 2ndly, Goods brought by the Royal Canal are free from Toll.

By 1 Geo. III. c. 17. s. 27, *all turf, furze,* and *timber, (in fagots for fuel)* are exempt from Toll in all parts of Ireland.

By 3 Geo. III. c. 34, no Toll, Custom, or Duty whatever, shall be paid or demanded for any *flax-seed, hemp-seed, flax, hemp,* or *cotton,* or any *cloth made of linen, or hempen, or cotton yarn,* or *cloth made of linen or hempen yarn and cotton mixed, kelp or potashes, wheels, reels, hackles,* or *looms,* for or by reason of their being brought to, or kept in any market or fair, or for the passage of them, or any of them, over any bridge, or through any city or place whatsoever, (turnpike gates only excepted,) a penalty of 40*s.* for each offence; yet very lately Toll was taken, demanded, and insisted on from many persons bringing out flax-seed to the country,

3*d.* each hogshead. Also potashes and kelp are frequently charged.

Many persons who bring in linen rags to sell to the paper manufacturers are charged Toll; also ropes in and out have been charged Toll, contrary to this Act.

Coloured cotton goods are frequently charged Toll passing through the town of Drogheda, as also the cotton wool, for all which the Act of Parliament, 3 Geo. III. c. 34, inflicts a penalty of 40*s.* for every offence. Also, by that Act, it would appear that charging Toll on these articles passing over the bridges of Derry, &c. &c. is illegal, as that Act forbids all Toll except for turnpike gates. This is worth attending to, as a great deal of flax-seed is carried over the bridge of Derry.*

And that same Act also requires all linen cloth or yarn sold in any fair or market, to be sold within the custom gates or gaps of such fair or market, under pain of forfeiture.

Thus that Act exempts all linen, cotton, &c. from payment of any linen Toll, Custom, or Duty whatsoever; and it also requires all linen and yarn to be sold within the fair, thereby to enable the proprietors to make returns of the quantity sold, and to prevent frauds in the sale.

By the Act 53 Geo. III. c. 123, the only charge on passing the bridge of Wexford,† over the river Slaney is, for every piece of linsey or linen, - 0½*d.*

Consequently all the other things above mentioned, viz. flax, hemp, cotton, looms, &c., can pass Toll free over that bridge at Wexford.

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* For the Tolls chargeable at the bridge of Londonderry, see Note to page 29, and also Appendix.

† This appears to be somewhat obscure, for by the above Act (Loc. & Pers.), the Tolls chargeable on the bridge of Wexford are of the most comprehensive and onerous description. For the information of the reader, I have given in the Appendix the schedule of those Tolls as prescribed by the statute adverted to.

Drays passing through Drogheda are charged 6*d.* each, which is contrary to the said Act of Parliament, 4 Anne, c. 8; the penalty for such demand is 10*s.* for the first offence, and 5*l.* for every other offence—to be recovered before a magistrate.

The lord mayor has lately attempted to prevent the selling by sample in the corn-market. Constables endeavoured to stop the factors, and one gentleman was very violently treated; he is a factor, and it is remarkable that he never sells a grain of corn which comes by *land carriage*, but the greatest part, if not all the corn which he sells, comes by the Grand Canal; yet his lordship seized upon the sample bags which that gentleman had in his hands, and the constables and policemen attempted to take him into custody; for what? For selling corn by sample, which corn came by the Grand Canal—thus attempting to enforce his illegal conduct by violence; I say illegal conduct, for I aver that any factor or other person who pleases, may sell his corn by sample, and that there is no law to prevent him from so doing, where the corn comes by the Grand Canal, by the Royal Canal, or coastways; and that any attempt to obstruct him in selling such corn by sample is highly illegal, may be resisted by force, and that the lord mayor and all assisting in giving such obstruction, are liable to actions at law for the injury, as well as indictments for breach of the peace.

I do not know how his lordship may be treated by the factors on the Grand Canal; but he may depend upon it, he will meet with a very determined and spirited resistance from the factors on the Royal Canal. With the factors and farmers on the line of the Royal Canal, it will be of great importance, *as thereby their corn will be free from Toll.*

The two canals are differently circumstanced as to Tolls; for, by the Act of Parliament, all goods, corn, &c. coming or going by the Grand Canal, are free from Toll; but by the Act of Parliament respecting the Royal

Canal, the right of the corporation of the city of Dublin to Toll is not done away, so that where *by law* entitled to Toll they are still entitled. Thus it will be seen, that to the Royal Canal it is of great importance to establish the practice of selling by sample, for *thereby* they will be free from Toll, whereas the Grand Canal is *at all events* free from Toll. So that with the Grand Canal factor it is only a matter of convenience; with the Royal Canal factor it is both a matter of convenience, and an important matter of interest; because it being clear matter of law, *that corn by sample is not liable to Toll*—what is the saving to the farmer who sends his corn by the Royal Canal? No less than one farthing a barrel, and one barrel of corn out of 80, at the very least.

This appears trifling to a small farmer, and not worth disputing about; but to an extensive farmer it amounts in a few years to a considerable sum, and the farmers now look to every charge the most minute. For when they have not money to give employment to their starving neighbours, they will not be so liberal to the corporation of the city of Dublin. Let it be considered, that it is considerably more than one-eightieth of the farmer's property; nay, it is actually more than one-eightieth out of his marketable corn:—what is to pay his rent—his taxes—his tithes—his workmen?

Many persons are yet ignorant of the distinction which by law is made between the corn brought by land carriage, and the corn brought by the canals and coastways. And supposing his lordship would not act illegally, they think *he must be right.* And as he exerts his authority to put down all selling by sample, they conceive he must have the power by law to do it. This is not the fact.

This idea, however, will be at once removed by looking at the lord mayor's proclamation, in which he confines himself to corn brought by *land carriage.* Let them look at the Act of Parliament of the 23d and 24th of the King,

under which his lordship professes to act, and they will see it relates entirely to corn brought by *land carriage.*—Then it may be asked, how came his lordship to prevent the factor selling by sample, when his corn comes by the Grand Canal, and not by *land carriage?* To that question it is impossible to give the proper answer. But this I can say, his lordship has no Act of Parliament to support him in his treatment of that factor.

The great object in this case is to secure the Tolls upon corn to the corporation, and this will be manifest, upon taking a short view of the subject.

Selling by sample* was introduced by Alderman Beresford during his mayoralty. The fact, *that by law corn sold by sample was free from Toll,* was published in "*Carrick's Morning Post.*" That was denied by the corpora-

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* Selling by sample was adopted in England about the year 1769, see the case of Hill and Smith, 10 East. Rep. It is a practice which appears objectional both in principle and its consequences. Thus a farmer on going into the market with his sample-bag in his pocket, and finding the prices high, can easily engage to deliver a certain quantity of corn to a purchaser at a rate agreed on: but on the contrary, should he find the market indisposed to offer a rate, in his mind not sufficiently remunerative, he makes no sale, and feels no inconvenience, having had but a few ounces of grain with him, while the bulk of his commodity remains undisturbed in his granary, waiting for such price as he may be disposed to take. Thus the rate of the market is kept up upon a fictitious principle, and all know the influence that the state of the corn market has upon every other species of provision, nay, upon almost every other species of property. Whereas if a contrary practice prevailed, the price of corn would find its natural level; this again would produce a salutary influence on rents, whilst both husbandman and the public would be mutually benefited by the change.

Certainly it is the interest of the great landed proprietors to encourage such a system, but it is also the interest of the public at large that the system should be discontinued. Indeed all systems founded on artificial principles (and this is one of them) are not only primarily bad, but ruinous in their results. And perhaps it is not too much to say, that if corn was *bonâ fide* sold in open market, as on public policy, all provisions, properly so called, should be disposed, that Mr. Huskisson would find little necessity in troubling himself with abstruse calculations upon the average prices of corn.

tion; and as many persons refused to pay Toll upon corn sold by sample, the corporation issued a proclamation, that they would compel the payment of Toll upon corn sold by sample. This proclamation was disregarded—the people refused to pay—forced their way in spite of the Tollmen. Upon this, another proclamation is put forth, by which it appears that the corporation had found out and considered that by the Act of Parliament, introducing the practice of selling by sample was highly illegal, and that after a certain day no corn should be sold by sample. But observe, that is and must be, corn brought by *land carriage*; for with corn brought by the canals or coastways they cannot interfere, and the factors may or *will* continue to sell such corn by sample without his lordship's being able to prevent it.

The city claim a right to the Toll which they demand, under pretence that they paid 2000*l.* a year towards the paving of the streets. This is not the fact, as the following statement will shew, for the 2000*l.* paid by the city was not for paving the streets, *but was for sweeping the streets.* This I shall shew from the Acts of Parliament themselves, and I shall also shew what they really do pay for PAVING.

The Act, 47 Geo. III. sess. 2. c. 109. s. 51, recites, "And whereas the *cleansing* of the streets and other places in the city of Dublin, before the passing of a certain Act of the 24th and 25th years of his present Majesty's reign, entitled, &c. &c., was conducted and managed under the decision of the lord mayor, sheriffs, commons, and citizens of the said city, and the expenses thereof were defrayed by them out of the revenue arising by the Tolls and Customs of the said city. And whereas, since the passing of the said Act the said lord mayor, sheriffs, commons and citizens, have paid to the commissioners intended to manage the paving, lighting, and cleansing the said city, the sum of 2000*l.* yearly, *towards* defraying the expense of cleansing the said streets." It enacts that 2000*l.* shall be

paid towards defraying the expense of cleansing the streets.

The sections 40 and 50 further demonstrate the truth of my assertion, and also shew, that the legislature must have been suspicious of the corporation attempting the deception which I am now endeavouring to do away. For section 49 recites, " That it was incumbent on the lord mayor, &c. to have and keep in repair, *certain parts of the pavements* of said city ;" and it goes to say, " That the estimated expense of paving those certain parts, (including Stephen's-green) was to be 350*l.*" and then enacts, " That the lord mayor, &c. shall pay 350*l*, a year; and in consideration of such payments so to be made, the said lord mayor, &c. shall be discharged and exonerated from all costs and expenses of paving and repairing the said pavements, and of the pavement around St. Stephen's-green.

Thus it is manifest, that all the city pays for, or *towards* paving the streets, is 350*l.*—not 2000*l.*, as asserted by the corporation.

Section 50 recites, " That the lord mayor, &c. used to maintain and light several globes or lamps at the mansion-house, tholsel, and market-house," and enacts, " That they shall pay 20*l.* a year in lieu thereof."

And in the Act of Parliament a distinction is made between *paving*, lighting, and *sweeping*, and separate sums appropriated for each.

A person might well imagine the Parliament was aware of the turn which the corporation would give it, if the whole amount had been put together, and not as above —separately; for it would then have been confidently asserted by the city, that the 2,000*l.* was paid for paving; such assertion, however, is now negatived by the Act of Parliament itself.

The corporation get full value for the 350*l.* *paid for paving*, not 2,000*l.* as alleged; as for that sum, the man-

sion-house, market-house, Tholsel, Stephen's-green, Smithfield, &c., are paved and kept in repair.

The charge for paving Stephen's-green would be nearly 250*l.* a year, if the city were charged at the general rate, viz. one shilling a foot all round the Green, being the usual charge for dead walls. This leaves but 100*l.* a year for the paving of the rest of the places belonging to the corporation.

The underneath extract, from the accounts of the Paving Board, will set the public right as to those assumed claims of the city; for it thereby appears that the expense of *cleansing* the streets of Dublin, amounted for the year ended, 5th January, 1815, to 5903*l.* 19*s.* 7½*d.* and the city only pays 2000*l.* *towards* it. That the *paving*, flagging, and lighting, for the same period, amounted to 30,935*l.* 6*s.* 3*d.* towards which the city only pays 370*l.*

The Commons' Journals shew—

" That in the year 1662, complaints were made to the House of Commons, of the gross extortion of the corporation. These complaints *were established*—the corporation threw themselves on the mercy of the House of Commons. A regulation then took place as to the Toll on corn, viz. *that corn should only be taken in the market, and on market-days*, a certain quantity to be taken for Tolls was ascertained ; *corn for private use* to be *exempt* from Toll, &c. &c. An address was voted to the Lord Lieutenant, praying to allow the city to take the Toll according to the regulation, and " Sir William Davis, Recorder, assured the House, that when the Toll came to be taken according to the manner proposed in the report, *the tax now laid upon the inhabitants of this city for* CLEANSING *the streets would be taken off.*" Well, the Toll was taken by the city, even more beneficially than that proposed by the report, and has so continued ever since ; but the tax was not taken off the inhabitants of this city for *cleansing* the streets.

Observe again, the 2000*l.* a year is paid, *not for paving*, but for *cleansing;* and that too, the cleansing of the different city markets, the profits of which are very considerable; for it is asserted that the potato, fruit, corn, hay, and cattle markets, do not return less than 12,000*l.* a year to the city, or those to whom they *choose* to set them.

Thus, it would appear, the corporation are still largely indebted to the inhabitants; and it was that consideration, no doubt, which induced the Parliament to make them pay the 2000*l.* to force them in some degree to restore a part of what they had consumed of the public money, for which they gave no value.

This is manifest from the said votes of the House of Commons. By these votes, Toll is only of right to be taken in market, and upon market days; and the *quantum* to be taken is one sealed quart struck of Winchester measure out of each barrel of wheat, rye, bere, and barley, and three pints struck out of each barrel of other grain sold in the market.

When Dublin was a walled city, one farthing a barrel was charged for the custom of the gates; but the right to that charge is done away, as no gates now exist; and even if the gates and walls still remained, the farthing a barrel for Toll-thorough ceased by the operation of the Act of Parliament, 4 Anne, c. 8, which abolishes Toll-thorough.

The place where the Toll shall be by right taken is, by said votes of the House of Commons, stated to be *in the market*, and on market days. These votes declare, *the taking of Toll in all places within the jurisdiction of the city, as well without as within the city*, to be a grievance. This requires to be explained, and the explanation and vote being considered attentively, will shew beyond a doubt, that Toll cannot by law be taken on the north side of the river Liffey; for, at the time of that vote, in the

year 1662, the city was surrounded by walls with gates, and it was only *at these gates* the city had a right to demand Toll; but they extended their Toll-stations to the very verge of the parts within, *not the city*, but within the jurisdiction of the city, which jurisdiction extended to the Black Rock and to Clontarf; and so one Toll-house is now beyond Ball's-bridge, and another Toll-house at Ballybough-bridge. This was by said votes declared to be a grievance, and is as much a grievance at this day as it was then.

Thus, if the corporation be confined to taking the Toll within the proper limits of the city, no Toll could be demanded at the north side of the river Liffey.

CHAPTER V.

The farmers in the vicinity of Dublin suffer considerably by their ignorance respecting Tolls, for I repeat, that Toll is not payable in one instance out of twenty where it is now charged.

Another thing also contributed to the support of these impositions, namely, the great dread that the ignorant country people entertain of the Toll-collectors at their different Toll-houses. This dread was industriously kept up until it became so impressed on the people's minds, that to this day, notwithstanding all that has been said and done on the subject, it has not been entirely eradicated.

If the farmers knew that all goods going to Kevin-street market are free of Toll and Custom, many would go there who now go to Smithfield. In fact, by law no Toll or Custom is payable on the north side of the river Liffey at all—this, the votes of the House of Commons of Ireland satisfactorily shew.

The Toll-houses which are in Dorset-street, New-street, on Mespil-bank on Donnybrook road, and at Ballybough-bridge, are in the county of Dublin, contrary to the Act 25 H. VI. c. 3. This Act makes it illegal to take Toll there, and the House of Commons have voted it a high misdemeanour. By the votes of the House of Commons, in the Appendix, it will be seen, that it is the duty of the Grand Jury for the county of Dublin to have these Toll-houses, which are in the county of Dublin, presented as nuisances. The practice of having persons stationed at Portobello and in Upper Dominick-street collecting Tolls remote from the old established Toll-houses,

is also contrary to the Act; and in all these cases the public may resist by force, and even after a successful resistance, may bring actions against the city and the Tollman, under the Act of 32 G. III. for the trespass.

Very great and oppressive exactions are practised in the different fairs and markets all over the kingdom, which, it is hoped, this Treatise will contribute to remedy. It applies to every market and fair in the kingdom, as well as to the Dublin markets.

The abuses in the different fairs throughout Ireland are incredible. The annual amount of the extortions, exceeding the proper and just Toll, is said to be upwards of 700,000*l.*

Wherever Toll is payable, a charge is made fully quadruple the legal demand; and this four-fold extortion is enforced by the most violent and overbearing conduct, in order to intimidate the ignorant country people into an unresisting submission.

In one fair in the county of Kildare, not many years ago, the Toll-gatherer demanded from a poor woman Toll upon two small earthen pipkins, which she had purchased in the fair *for one halfpenny each, and he demanded one halfpenny each for Toll.*

This is by no means a solitary instance of extortion, for it is unhappily the fact, that this extortion pervades the entire kingdom, and no where is it greater than in the poorest and most remote parts of Ireland—because the Toll-farmers know that they are too poor to look for redress, and as the country people find the same charges at all the adjoining fairs, they believe them to be so established as not to be resisted.

At the fair of Granard, not long ago, a boy was bringing in some pieces of frize, the Tollman demanded 6*d.*, the boy had it not—the man would not take his word for the money until he should sell the frize, and he kept the poor boy so long out of the fair that he entirely lost his

market, and had to bring back his frize several miles, to his great loss and inconvenience.*

It is to be hoped the legislature will interfere to put an end to these abuses—there is a good precedent for it,—(See Cro. Eliz. 551, 591—in Appendix)—as it is the fact, that *in England the greatest part of the fairs have not any Toll.*

There should be no Tolls, Customs, or Market-dues. The people should pay those who attend to regulate the fairs and markets. The *cheapness* which would result from a free intercourse would be to them a sufficient compensation.

In many fairs in Ireland cattle are charged both before and after the sale. This is lately the case at Irvinestown, (late Lowtherstown) in the county Fermanagh. Farmers and graziers will see, by the Act 4 Anne, c. 8. s. 3, that *cattle unsold shall not pay any Toll whatever.*

At the fairs of Donnybrook in the city of Dublin,† Kilcock in the county of Kildare, at Granard in the county of Longford, and in numberless other fairs through this kingdom, cattle are charged both going in and coming out, and also very much overcharged, besides charging every article that is sold in the fair, which is illegal.—Victuals,‡ wares, &c. are not liable to Toll.

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* This was grossly illegal on three grounds; first, no Toll is payable by the seller;—secondly, no article is liable to Toll until sold;—and lastly, the owner of the frize had indisputable grounds for an action against any person who prevented him from selling his wares in the market; for it is settled law, that if A has a market and Toll, and B is coming with goods to the market, for which, if sold, Toll would be due, and C hinders B coming to the market; the lord of the manor may have an action, because of the possibility of damages, per Powell 6 Mod. 49.—2 Ventris, Turner *v.* Sterling. Now, if the lord of the manor is entitled to damages for the loss of Toll; with how much greater reason has not the seller to complain of the loss of his time, and the consequent profits of his industry?

† See ante.

‡ "And by common right Toll shall be only upon a sale of live cattle, not of victuals, wares, &c." R. Mod. 174.

Toll in fairs can only be demanded upon corn and cattle; yet in the fair of Ardee in the county of Louth, frizes were lately charged 10*d.* although the usual charge was only 3*d.*, but the people having submitted to the charge of 3*d.* on each 20 yards of frize, the Toll-farmers advanced their charge to 10*d.* It is not to be understood, that this charge of Toll upon frize is the only charge in the fair of Ardee, or the fair of Mulaghcrew, and the fairs and markets of Dundalk in the county of Louth.

In the fair of Parsonstown (or Birr) in the King's County, a man had his web of woollen cloth a short time ago seized for Toll. He brought an action against the Toll-farmer, who thereupon gave up the web to the owner; and in consequence of even so trifling an opposition, the charges in the fair of Parsonstown are now more moderate than formerly. In many fairs through the kingdom great complaints are made of the exorbitant charges. At the fair of Fieldstown in the county of Dublin every thing is charged; and the poor people, to the very apple-women, are heavily charged for their standings in the fair, which is contrary to law, as every person has a right to a standing in every fair or market to sell his wares, without payment of any thing whatsoever for such standing.

The Act of 32 G. III. c. 29, gives the person illegally charged Toll a remedy against the city, by applying to the lord mayor for his certificate, whether the Tollman acted under the authority of the corporation or not.

The following certificate was prepared by a lawyer of great eminence at the bar. His directions were to have two copies of it ready, and to tender one of them to the lord mayor—if he does not sign it, it will be a refusal, under the words of the Act.

CERTIFICATE.

"*I, the Right Honourable the Lord Mayor of the city of Dublin, do hereby certify that A. B. Collector of Tolls claimed by the corporation of the city of Dublin, who, on the day of at seized the property of and detained same for Toll claimed as due and payable to the said corporation, in so doing, acted under the authority of the corporation of said city.—Dated this day of* 18 "

Then he may join the city treasurer or chamberlain in the action.

The swearing of persons leaving the fair of Ballinasloe, is practised there probably to a greater extent than almost in all the rest of the kingdom. It is lamentable to see the hundreds, if not thousands, who, without hesitation, take these false oaths. It is not thought any thing about, but regarded as a matter of course; the man tenders the oath and the person takes it with much more indifference than would attend the paying and receiving one halfpenny. The positive turpitude of such conduct is evident, the effect of it upon the moral habits of the people is injurious beyond exception. Many persons say that the man who, without scruple, takes *this* false oath to escape payment of Toll for a cow bought by him at the fair, would nevertheless in other respects be perfectly honest and trustworthy. That in fact it is a forced oath—that it is taken without reflection. And what, say they, is a man to do, who having bought a cow at a fair, which cow is to give milk to his children, has not wherewith to pay the Toll, is he, say they, to leave the cow in the fair? It is according to them merely a harmless deception to escape imposition.

It is the *duty* of the magistracy to put an end to the practice; and I hope that some of the neighbouring magistrates will act up to their duty, and by a timely inter-

ference put an end to this horrible immoral practice at Ballinasloe. It is an indictable offence at common law, but it is still more penal by the Act of Parliament, 27 G. III. c. 5. s. 6, in Appendix.—By that Act the offence of tendering such an oath is a felony, punishable with *transportation for life;* and the person who takes it, is liable to transportation for seven years.

That Act of Parliament is made perpetual, by Act 40 Geo. III. c. 96. s. 11; and it is to be hoped that the magistracy of the country will not suffer it to remain a dead letter on the Statute Book. If they do, it will reflect discredit on themselves. They cannot plead ignorance for their forbearance. They are constantly in the fair whilst it is practised, and the people must naturally suppose the practice *lawful*, or the *magistrates* would not permit it.

I shall now enter into the nature of the Tolls demanded at this fair, and shew the *legal amount* of Tolls at every fair through Ireland; when they should be charged, and when *not;* also upon what goods, &c. Toll is payable, and upon what *not* payable.

The entire is applicable to *every fair in Ireland*, as well as the extensive fair of Ballinasloe, which I had chiefly in view.

The charges in this fair for Toll are very great, viz.

Horses, each,	-	6*d.*
Cows, each,	-	4
Sheep, each,	-	1
Pigs, each,	-	1

In this fair they do not charge Toll for cattle until they are sold. In many other fairs in Ireland they charge for cattle upon going into the fair before sold, and coming out when sold, which is contrary to the Act of Parliament, 4 Anne, c. 8. s. 3, which enacts, "THAT *in all cases where any cattle shall remain unsold at* ANY FAIR OR MARKET, *that it shall be lawful for the owners or drivers thereof to carry away such cattle as shall remain unsold, without paying any*

Toll whatsoever." By this Act the penalty on the Tollman is 10*s.* for the first offence, and 5*l.* for every subsequent offence, to be recovered on complaint to a magistrate within six days after the offence is committed. And if the magistrate *neglects* or *wilfully omits* to do his duty, he is liable to 20*l.* *penalty.*

In Dublin the uniform practice, until lately, *was* to charge for all cattle coming in, and if not sold they were charged coming in again; but *now*, some persons refuse to pay the Toll coming in, and they are suffered to pass. Every day, people are becoming better informed, and more determined to resist extortion; and in a short time every imposition as to Tolls in *Dublin* will be done away. The practice of collecting at the Toll-houses will be abandoned and confined to the markets, which are the *proper places*, and in fact the only places where they can be *legally* demanded.

The Tolls on cattle in Dublin are limited to the legal and proper standard, as set out in the docket-sheet posted up, nevertheless, extortion has crept in there. This could never be the case if the public would always stand firm to their rights, and only pay where and when they ought, viz. *in the market and after the sale.*

The Tolls in Dublin upon cattle are,

Every bull, bullock, or cow,		-	1*d.*
Every calf,	-	-	$\frac{1}{2}$
Every hog or pig,	-	-	$\frac{1}{2}$
Every lamb,	-	-	$\frac{1}{4}$
Every sucking pig,	-	-	$\frac{1}{4}$
Every sheep,	-	-	$\frac{1}{4}$

The above are the regular charges in the docket, but imposition is nevertheless practised at the different Toll-houses, viz.—

At Donnybrook Toll-house the Toll-farmers charge for lambs one halfpenny each, instead of one farthing each.

At Dorset-street Toll-house they charge for calves one penny each, instead of one halfpenny each.

At all the Toll-houses they charge for all pigs one penny each, instead of one halfpenny, and a farthing for sucking pigs.

I again remind the public, that in Dublin many graziers refuse to pay for their cattle *coming in;* this in the course of years will to many persons amount to a considerable sum, and probably in a short time such a reformation will be effected in the collection of Tolls, as totally to remove the grievance, and with the grievance the entire Toll, for in Dublin the legal Tolls would not be worth keeping men at the different Toll-houses in and about Dublin to collect them.

But to return to the subject of fairs, and the charges made there upon persons selling their goods, many of which charges are quite illegal.

In the first place, by the Act of Parliament, 3 Geo. III. c. 34. s. 9, a man who brings into any market or fair any flax-seed or hemp-seed, flax, hemp, or cotton, or any cloth made of linen, or hempen, or cotton yarn, or cloth made of linen or hempen yarn and cotton mixed, kelp or pot-ashes, wheels, reels, hackles, or looms, shall not pay any Toll for them, nor for the passage of them over any bridge, or through any city or place whatsoever, (turnpike gates only excepted); and the person who shall *demand*, exact, or take any Toll, Custom, or Duty whatsoever, contrary to said Act, shall, for *every* such offence forfeit 40*s*.—So that all a man has to do who brings such goods into the fair, when required to pay Custom or Toll, is to inform the Tollman, in the presence of some creditable witness, that his goods were linen, &c. &c.; and if, after such information he *demands* the Toll, then he is liable to the penalty of 40*s*. for *every* offence, even though the owner refuses and does not pay.

At Ballinasloe and other fairs, each bag of wool is

charged for Toll, and also for weighing and crane note. And at the fair of Mulachcrew, 2*s.* 6*d.* per bag is charged, whether large or small; this charge is a monstrous extortion.

Before saying any thing as to the amount of Toll which can be legally demanded at fairs, I shall call the recollection of the public to the exertions of one individual—the late Mr. John Stevenson,* so lately effected at Naas in the county Kildare; he not only completely struck off the Toll above alluded to, upon victuals, wares, &c. which was there charged, but he also reduced the Toll charged upon cattle in the fair of Naas to the following sums, as in the underneath copy of the docket, which he procured to be there posted up in *legible characters.*

At the time of Mr. Stevenson's interference, Lord Mayo was sovereign of Naas; to him Mr. Stevenson applied, and on his representation of the extortion practised at that fair, Lord Mayo was induced to put a stop to further abuses; in consequence of which the following docket was prepared and posted up.

Mr. Stevenson then brought his action against the Toll-farmers for charging him *five farthings* for five noggins which he had bought, for the express purpose of bringing that action—he got *twenty-five pounds* damages.

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* And in the present year (1829) Tolls are nearly annihilated at Castlebar, and almost throughout the county Mayo, and this by the laudable exertions of the Hon. Frederick Cavendish.—See Appendix.

CORPORATION OF NAAS,

SEPTEMBER 29, 1812.

Sovereign of said Corporation for the year ending September 29, 1812.

Docket of the Customs of the Corporation of Naas to be paid at the Fairs, as granted and established by the Charter, prescriptive and immemorial usage, posted, pursuant to the Statute, 1 Geo. III. c. 17. s. 25.

No Toll or Custom to be paid at any of the markets.

Horses,	-	-	2*d.*
Cows,	-	-	2
Heifers,	-	-	2
Bullocks,	-	-	2
Lambs,	-	-	1
Calves,	-	-	1
Pigs,	-	-	1
Sheep,	-	-	1
Stalls and Stands,		-	6

N. B. Any person aggrieved by the Toll-gatherers of Naas, the Sovereign will be at all times ready to give him his utmost assistance.

This alone would be an important benefit to the public, but Mr. Stevenson's active benevolence did not stop here; in fact, to him the public are indebted for every correction of these abuses which have been effected in the city of Dublin. His death has been a great loss to society, as they were deprived of a man of the most humane and honest disposition, joined to a persevering activity, which made him of great service to that community who now enjoy the benefit of his exertions.

Previous to this time, viz. 1812, when Mr. Stevenson interfered, every thing sold in the fair was charged Toll,

down to the very *noggins.* Now it may be useful to compare the charges for Toll on cattle in Dublin, at Naas, and at Ballinasloe. The charges in Dublin are *as high as by law can be demanded.* At Naas the charges are double, at least, to what they are in Dublin.

At Ballinasloe the charges are still greater. I shall now proceed to shew what, by law, is the *utmost* which can be charged.

By searching for the patents under which a fair is held, it would be seen what is the utmost amount of the Toll granted. The expense of searching and reading a patent would not exceed a few shillings, and I conceive it well worth this to many individuals, who would thereby soon save what it may cost them to search for the patent.

" By law* the highest charge which can be taken for cattle is 1*d.* each, but is sometimes less; and by law, Toll is only chargeable in fairs and markets upon live cattle, and not upon victuals, wares, &c."—Comyn's Digest. Tit. Market, v. 4. p. 181.

By the Statute North. 2 Ed. III. c. 15, " the lord of a fair, at the commencement of a fair, shall publish for

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* This must mean common law, for Tolls are often regulated by Statute.—Certainly the *Mirror* says, (fo. b. c. 1. § 3) " that it was ordained that fairs and markets be made in places, and the *buyers* of corn and beasts give Toll to the bailiffs of the lords of the markets or fairs—that is to say, a halfpenny of tenpenny worth of goods, and of less, less—and of more, more (al afferant) to the person to whom it belongs, so that no Toll exceeds one penny of manner of merchandize; and this toll was invented for witnessing of contracts, for every privy contract was forbid."

It is a dictum of Popham, Cro. Eliz. 555, " that the King may grant a fair, and Toll be paid; but it must be a very small sum, as 1*d.* or 2*d.* or less, but *not more.*" But, Mo. 174. pl. 680. S. C., the justices held 1*d.* *per beast unreasonable.*

N. B. " A halfpenny of tenpenny worth of goods:" on reading the above, the Editor at first thought it a misprint in Viner, from whence it is copied; but on turning to the original in the Mirror, the text stands thus: " Cest ascavoir maile de dixe sous de biens, et de meynes, meynes, et de pluis, pluis." So that the above reading is correct.

what time it shall continue, and shall not hold it beyond his due time, otherwise it shall be seized into the king's hands."

"The duties usually paid at a fair or market are Toll, Stallage, Picage, &c."

"Toll is not incident to a fair or market; and therefore a grantee shall not have Toll without a special grant." —2 Inst. 220, 716, in Marg. R. Cro. Eliz. 558, 592. Mo. 494. R. Palm. 77, 86.

"And therefore it is not sufficient to allege the grant of a market, with all Tolls belonging; but there must be alleged an express grant, or a prescription for Toll."—Lut. 1380.

"So the king cannot grant a Toll for goods not brought to the market."—Lut. 1502.

"So, regularly, Toll shall not be paid before the sale, for it is due from the buyer, not the seller."—2 Inst. 221. R. Lut. 1336.

"If a man takes outrageous Toll, he does not forfeit the market, but the Toll only. The Stat. W. I. 31, says, 'That the king shall seize the franchise of the market into his hands;' but that is, till it be redeemed."—2 Inst. 221, R. that the Toll only is forfeited. Pal. 82. Quo. W. Treby. 37.

"If the Toll granted be unreasonable, the grant will be void."—2 Inst. 220. Cro. Eliz. 558.

"*Toll* is a reasonable sum due to the Lord of the fair, or market, for things sold there, which are *Tollable*."—2 Inst. 220.

"Toll, by common right, shall be *only* upon a sale of *live cattle*, not of victuals, wares, &c."—R. Mo. 474.

"The above law authorities shew what Toll is to be paid. They are express and unquestionable. The authorities here recited shew that live cattle only are liable to Toll, and not victuals, wares, &c. viz. R. Mo. 474, was, in a very late case in Belfast, cited by Mr. Holmes as the

law now in force, and which was by Baron M'Clelland admitted so to be.

There are also many cases of exemption, as set out in this Treatise.

Every freeman of Dublin is free from all Toll upon cattle or goods bought or sold in any fair or market throughout Ireland; so is every freeman of London.—The freemen are also free on passing any corporation bridge or ferry, either in Dublin or Derry, &c.*

At the bridge of Derry some years ago, a poor man who carried his shoes in his hand, as is the frequent practice with poor people travelling, was charged additional Toll for passing the bridge, as if he had been carrying a load.

Every word here equally applies to all the fairs and markets in the kingdom, in all of which great impositions are practised.

The charges made for Toll at the fairs and markets in Clonmel in the county of Tipperary, are very much complained of by the country people. I therefore repeat, that *every word* respecting fair, applies equally to the fairs at Clonmel, Strabane, &c. &c., as to those of Ballinasloe.

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* There are others besides freemen who are exempt from Toll, for Lord Coke states that "the king shall not pay Toll for any of his goods, and if any be taken it is punishable within this statute." (Westminster Primer) 2 Inst. 221.—And by his grant, he can exempt others from Toll.—Palm. 85.

Clergymen are likewise exempt, as we find from the same authority: "Also ecclesiastical persons ought to be quit and discharged of Tolls and Customs, average, pontage, paviage, and the like, for their ecclesiastical goods, and if they be molested, therefore they have a writ for their discharge, by which writ it appeareth, that this was the antient common law of England. Rex, &c. cum personæ ecclesiasticæ secundum consuetudinem hactenus in regno nostro usitatam, et approbatam; ac ad telonium, paviagium, et muragium, &c., de bonis suis ecclesiasticis alicubi in eodem regno præstand' nullatenus teneatur, &c." Lord Coke's Commentary on *Magna Charta*, chap. 1. 2 *Inst.* 4.—*F. N. B.* 227. *Reg.* 260.—So for goods bought for their sustenance. *F. N. B.* 227. *F.*

I have thus shewn that the Tolls charged at these fairs are extravagantly great, and downright extortion. I have also shewn what is the proper sum to be paid, which sum only, and no more, can be legally demanded; and *as to the mode of redress*, it remains to be observed, that upon the owner tendering the legal Toll to the Toll-gatherer, if he refuses to take it, and to attempt to seize the goods or stop the cattle, or to obstruct the owner, and prevent his bringing them out of the fair, the owner may resist him, and take his goods and cattle away, and may afterwards prosecute the Toll-gatherer for the obstruction.

I am the more particular on this part of the subject, because *even in Dublin, until lately*, the People erroneously imagined that they must submit to the Toll-man's demand.

This erroneous idea of the Toll-men having an authority which the people must submit to, arose very much from seeing them swearing persons in Dublin as at the fairs; for the poor man conceived them to be like *petty* magistrates, or else they could not have authority to administer an oath.*

The idea will be at once removed when they understand that the Toll-man who administers that oath, is liable *to be transported for life*, no matter in what way he tenders the oath, either by *throwing the book on the ground*, or by *forcing* the person to swear.

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* It cannot be too firmly impressed on the minds of that class most interested in the subject of this treatise, that no person whatever is empowered to administer an oath unless specially entitled to do so:—some are qualified in right of office, such as Judges, Magistrates, &c. There are others not officially qualified, but for the public convenience and the ends of justice are empowered to administer oaths; the latter are called "Commissioners for taking Affidavits;"—now Toll-men belong not to either of these classes. However, not only Toll-men, but indeed any unauthorized person who presumes to administer an oath, subjects himself to very severe penalties.

CHAPTER VI.

In the Appendix will be found the Act 4th Anne, c. 11, respecting the sale of horses at fairs. Its importance to every person who buys or deals in horses will be manifest upon reading the Act itself. Persons who pay large prices for them at fairs or markets, are frequently exposed to the loss of the horses from the non-performance of the requisites set down, both on the part of the seller and purchaser in that Act; by which it is enacted, "That the sale in any fair or market, overt, of any horse stolen, or feloniously taken away, shall not alter the property unless said horse shall, in the time of said fair, be openly exposed one hour, between ten in the morning and sunset, in the place where horses are commonly sold, and not in any house, yard, or other private place, and unless all the parties come together before the book-keeper, and bring the horse at same time, and there enter their names and dwelling-places, with the colour and one special mark at least of the horse in the keeper's book. And it also enacts, "that no person shall, in any fair or market, sell, give, exchange, or put away any horse, unless the book-keeper, or chief officer of the same market or fair takes upon him perfect knowledge of the vendor, and enter his knowledge in said book—or else that the vendor shall bring to the book-keeper one credible person, who shall testify unto, and before such book-keeper, his knowledge of the vendor, and enter in such book the name, mystery, and place of residence of such person of the vendor; and that no book-keeper shall enter such sale unless he knoweth the vendor or party who shall so vouch, and that such book-keeper or other person shall give the buyer, requiring and paying 3d. for the same, a note in writing of all the full contents

of the same. And every sale-gift, exchange, or other putting away of any horse in fair or market, not used in all parts according to the true meaning of said Act, shall be void."

The sale being void, the original owner might, at any distance of time seize his horse, and the buyer could only resort for his money to the person from whom he bought it.

The observations in 2 Blackstone's Commentaries, page 450, on this point, are peculiarly worth attending to, and will convince the public how much they have been hitherto in error, in respect of the sale or purchase of horses at fairs. He commences thus, page 449 : "And for this purpose the *Mirror* informs us, (c. 1. s. 3,) were *Tolls* established in Markets, viz. *to testify the making of contracts ;* for every private contract was discountenanced by law. Whereupon our Saxon ancestors prohibited the sale of every thing above the value of 20d. unless in open market; and directed every bargain and sale to be contracted in the presence of a credible witness," (L. L. Ethel. 10. 12. L. L. Eadg. Wilk. 80.)—He then says, page 450, 451, "But there is one species of personal chattels in which the property is not so easily altered by sale, without the express consent of the owner, *and those are horses ;* the sale of which, even in fairs and markets, overt, is void in many instances where that of other property is valid : because a horse is so fleet an animal, that the stealers of them can fly far off in a short space, (2 Inst. 714,) and be out of the reach of the most industrious owner. All persons therefore, who have occasion to deal in horses, and are therefore liable sometimes to buy stolen ones, would do well to observe, that whatever they may give, or how long soever they may keep possession before it be claimed, they gain no property in a horse that has been stolen, unless the directions be pursued that are laid down in the Statutes, 2 P. and M. c. 7, and 31 Eliz. c. 12. By which it is enacted, that every horse to be sold shall be openly

exposed in the time of such fair or market for one whole hour together, between ten in the morning and sunset, in the open and public place used for such sales, and not in any yard or stable; that the horse shall be brought by both the vendor and vendee to the Toll-gatherer or book-keeper of such fair or market; the toll be paid *if any be due;* and if not one penny *(in Ireland three pence)* to the book-keeper, who shall enter down the price, colour and marks, with the names, additions, and abode of the vendee and vendor, the latter either upon his own knowledge or the testimony of some credible witness."—" But in case any of the points before-mentioned be omitted, or not observed in the sale, such sale is utterly void, and the owner shall not lose his property, but at any distance of time may seize or bring an action for his horse wherever he happens to find him. Wherefore Sir Edward Coke observes, (2 Inst. 719), that both by the common law and these two statutes, the property of horses is so well preserved, that if the owner be of capacity to understand them, and be vigilant and industrious to preserve the same, it is almost impossible that the property of any horse, either stolen or not stolen, should be altered by any sale in market overt by him that is *malæ fidei possessor.*"

The circumstance of the English Acts containing the expression, "If Toll due, and if not, one penny to be paid to the book-keeper," tends very much to confirm what I have before stated, and what is laid down by the Judges of the King's Bench, Cro. Eliz. 558—591, viz.—"That Toll is not incident to a fair, and that the greatest part of the fairs in England have not any Toll."—Probably if the right to Toll was investigated in Ireland, very many would be found not to have Toll.

The Act, 25th H. VI. c. 3, confines the taking of Toll to *within* boroughs or market-towns, and cities, and further restricts them by these words, "*As they have power and sufficient authority to take and levy such Customs;*" for

without these words the corporation would claim Toll upon all goods "bought or sold, or brought to be sold;" but the Act itself furnishes the answer to such assertion, viz. "as they have power and sufficient authority to take and levy such Customs," and then it stands thus:—When entitled to Toll, they are prohibited from taking it any where but within the city. But this Act gives them no new authority, no additional rights; it is for the protection of the subject against the encroaching extortion of Corporations; more effectually to provide against these extortions, the Act, 32d Geo. III. c. 29, was made in aid of 25th H. VI. so that now the man from whom the Toll is illegally demanded, or who is attempted to be overcharged, has a variety of remedies. He may resist and force his way. He has a further remedy, by action at law for the detention: and by 32d Geo. III. c. 29, he may join the city Treasurer in any such action, and so is secure. He may replevin the goods—he may pay and then recover back the money which he has paid wrongfully for the last six years, in an action for money had and received—he may indict the Toll-man for extortion, and he also who assists is equally guilty, for there are no accessaries to extortion, and he may proceed under the Acts of 25th Henry VI. and 32d G. III. to recover 20s. for each penny paid; he may, under 3d Edw. I, attaint the city of extortion, and deprive them of the right of Tolls; and in all these cases the labour of a defence is thrown upon the Toll-gatherer, for the person charged has only to prove that he had paid such a sum for Toll, and the Toll-gatherer must shew a clear right to demand it.

But nothing would so effectually put an end to the impositions, as for the owner of the goods on all occasions where an overcharge is attempted, to resist by force, and in spite of the Toll-men.—For the public may be assured, that the Toll-men are by this time well aware that the city cannot afford them protection.

Upon corn, Toll is by right only payable upon market-days, and in the market, and the amount is only one sealed quart struck of Winchester measure, out of every barrel of wheat, rye, bere, and barley; and three pints struck out of every barrel of other grain.

The resolutions of the House of Commons, (see Appendix,) as to the Toll on corn, are well worth careful reading and attending to by every person in the corn trade.

In Drogheda, meal is only charged an halfpenny Toll per barrel, whereas in *Dublin* it is charged 5*d.*

The higglers, who go round the country gathering eggs and fowls to bring to the Dublin market, are charged exorbitantly. Upon such a body it never was the intention of the Legislature to levy contribution for individual, or corporate aggrandizement; and in fact there are express Law Authorities in the books forbidding it. Nevertheless these higglers are charged without remorse or dread, for they are too poor to be feared. The city, by their own docket, only claim "of every horse-load of eggs, 1*d.*" It were scarcely credible that the Toll-farmers actually charged 1*d.* for each hundred in number.

It is computed that a sum not less than 40,000*l.* of *illegal excess* is yearly raised under pretence of Tolls and Customs.

The following notices, published and circulated, the one by the factors in the Kevin-street markets, and the other by the persons engaged in and connected with the trade to the North, are of considerable use; many persons in consequence of the publicity which these notices gave to the illegality of the charges, refused to pay.

Tolls and Customs of the City of Dublin.

THE factors of the markets in Kevin-street give this notice,

That by the Act of Parliament of 4 Anne, c. 8, no Toll or Custom is payable on hay, straw, bacon, butter, corn, potatoes, cattle, fowl, or eggs, *or any thing else* coming to Kevin-street markets, whether passing through Dublin or not, by the Custom-gates or Toll-houses at

Ballybough-bridge,	Dorset-street,
Constitution-hill, or	Barrack-street,
Broad-stone,	James's-street,
Ball's-bridge,	New-street,
Dolphin's-barn,	Portobello,
Donnybrook-road,	Stonybatter,

Or at any other Toll-house or place in Dublin or Ireland.

Nor is any other Toll or Custom payable upon goods for private use. By said Act of Parliament, no Toll or Custom is payable upon cattle in Smithfield until they are sold. And by section 3 of said Act of Parliament, it is enacted, "*That in all cases where any cattle shall remain unsold at any fair or market, that it shall be lawful for the owners or drivers thereof, to carry away such cattle as shall remain unsold, without paying any Toll whatsoever,*" so that it is *unlawful* to charge Custom on the cattle going into any fair in Ireland.

N. B. If any Toll-man attempts to stop the cattle or goods, he may be resisted, and the owner force his way.

Drogheda and Dublin Tolls and Customs.

NOTICE is hereby given to all carriers, &c. on the northern roads, That *no Toll* can by law be demanded or

charged on any cattle or goods whatsoever, passing in or out of the Toll-houses in Dorset-street, New-street, or Portobello, which are in the county of Dublin.—Also, that by the Act of Parliament of 25 Hen. VI. c. 3, there is a penalty of 20*s.* for every penny which shall be taken or levied there.

And that by the Act of Parliament of 3 Geo. III. c. 34, *no Toll* is payable upon any flax-seed or hemp-seed, flax, hemp, or cotton, or any cloth made of linen or hempen yarn and cotton mixed, kelp or pot-ashes, wheels, reels, hackles, or looms.—And there is a penalty of 40*s.* on any Toll-man for charging, or *even demanding* Toll thereon.—So that charging Toll on *printed calicoes* passing through Drogheda is unlawful.

Also that the charge of 6*d.* on each dray-load of goods passing through Drogheda (by the Act of Parliament of 4 Anne, c. 8,) *is unlawful*, and by that Act there is a penalty on the Toll-men of 10*s.* for the first offence, and 5*l.* for every second or other offence, of charging such Toll.—Said penalties to be recovered upon complaint within six days before a magistrate.

And that *in any case* of attempting to charge unlawful Toll, *in town, fair, or market*, the owner or carrier of the goods or cattle may resist the Toll-men *by force*, and if the Toll-men attempt to stop him, *force his way*, and *afterwards* prosecute the Toll-men.

For *swearing in fairs* the Toll-men who tender the oath, are (by the Act of Parliament) liable to be transported *for life*, and the person who is sworn is liable to be transported for seven years.

22*d February*, 1817.

Nothing but an express grant or prescription will entitle the corporation to take Toll, and no custom will jus-

tify them.—Many conceive that Toll may be payable from *long usage*, and so become payable by custom. This is not the fact, no custom will justify taking Toll—no length of time will justify any extortion ; and the person acting according to such custom would be liable to indictment for extortion, and to a Civil Action for the injury. The case which I shall quote as my authority is Holloway *v.* Smith, 2 Strange's Reports, 1171—(See Appendix.)—" That Toll was not incident to a fair," and so that no custom would warrant the demand.

It is to be observed, that there is no prescription or custom in Ireland,—" for such custom must be time out of mind used, which custom none can challenge, that claim the fair or market by grant, within the time of memory, viz. since the reign of Richard I.

So that the corporation of Dublin, &c. &c., must in Ireland produce an express grant from the Crown by charter or letters patent, to entitle them to take Toll; and such grant of Toll must be reasonable, for if unreasonable the entire grant would be void.

An attentive reading of the different Acts of Parliament will afford very useful information. They are plain, simple, and very readily understood. The cases in the Appendix are of the first authority. The Resolutions of the House of Commons are particularly applicable to the present subject, for they took their rise out of the exactions then practised in the city of Dublin, but which at that day were trifling in comparison with the present exactions.

These extortions have frequently been the subject of complaint to the Irish Parliament. Investigations have taken place, and the persons who so extorted have been brought as delinquents to the Bar of the House in custody of the Serjeant at Arms, and committed to Newgate for their misconduct. A petition should now be presented to Parliamant praying for the total abolition of Tolls all over the kingdom. If the subject were once referred to a

Committee, there cannot be a doubt but the justice and policy of such a measure would appear manifest, and thus the entire grievance be removed at once without danger of its renewal.

Whenever Toll is charged at any of the Toll-houses or places, which are in the county of Dublin, viz. Dorset-street, New-street, Mespil-bank, Ballybough-bridge, Portobello, a summons can be had from the seneschal of the manor wherein that Toll-house is situate to recover the money paid, and a few persons doing so would contribute to stop these extortions.

But the cheapest, most effectual, and advisable course for the public, when Toll is overcharged, or when charged where none is payable, or at a place where, by law, it is illegal to collect it, as at any of the Toll-houses which are in the county of Dublin, is, in all these cases, to refuse paying, and to resist with such a determination, as will shew the Toll-man that they are resolved not to submit.—This removes the grievance at once, without trouble or expense, and will prevent the attempt being renewed.

The corporation would sooner twenty civil actions were brought against them than one criminal one, for the trial coming before the Recorder, his opinion would be public and decisive; but where actions are brought, judgment is suffered to go by default, and so the public hear nothing about them, and the extortion goes on.

The action brought by Messrs. Pilsworth against the corporation of the city of Dublin, for taking Toll of corn, &c. by force—(See Appendix,)—is one of very considerable interest. It involved many questions—the goods were for private use—the goods were not in the market—neither was it on a market day. A full report of this case is inserted in the Appendix; it therefore only remains to make a few observations upon the conduct in this affair of the corporation, and those acting under them.

Mr. Pilsworth offered to leave the question in dispute

between him and the corporation, which was, "Whether the city were entitled or not to the Toll they claimed," to the decision of any two lawyers of eminence, of whom the recorder of the city of Dublin should be one. This offer was refused, and Mr. Pilsworth still continuing to refuse payment of the Tolls demanded of him, the then Toll-farmers, with, as it afterwards appeared, the full approval of the persons who conducted the city affairs, stationed a party of men upwards of twenty in number, who, in the most outrageous manner, stopped the corn by force and took out the Toll. This conduct of the Toll-farmers received the thanks of the corporation through their organ, called "The Law Committee."

But the verdict of a respectable jury have stamped the act as illegal, and have given 50*l.* damages for the outrage.

It may here be right to observe what might have been the consequence of that outrageous attack, had the owners of the goods resisted the aggression—had they encouraged the canal boatmen to take summary vengeance upon the Toll-men, lives would possibly have been lost on the one side or the other. And if that had been the case, in what situation would the Toll-men have stood?—if they lost their lives, the party resisting would perhaps have been found guilty only of manslaughter, or perhaps only of justifiable homicide—whereas, in the Toll-men it would be MURDER in them all, in contemplation of the illegality of the attempt in which they were then engaged. And I assert, that the corporation influence would not be able to save them from the hands of justice. Their conduct has been so notoriously extortionate, so violent and overbearing towards all the poorer classes, that mercy to them would be injustice to the public.

Let them consider this—let them reflect on the illegality of their own conduct, and how much exposed they are to the dangers of a violent resistance. For they may de-

pend upon it that the spirited exertions of the Messrs. Pilsworth will have the desired effect; and that all persons who can, will henceforward resist their illegal demands.

The corporation have been very indignant at the different newspapers calling their conduct *public robbery;* but they have not as yet shewed that they had a right to the Tolls which they charged, and certainly if they have no right, such charge is *robbery* at the least, but it has been shewn to be worse, and to be in contemplation of law MORE ODIOUS THAN ROBBERY. (1 *Plowden*, 68,) which the public are perfectly justified in resisting.

PLEADING.

The Editor, before he closes this Treatise, here offers a few succinct general Rules, respecting the remedy in litigated Toll cases, and the Pleadings thereto.

It is settled, that if a party has a right to Toll, that right can be established by *distress*, as where A claims Toll and B controverts that claim, the remedy of the former is by distress, which is incident to every Toll,* and in Heddy and Wheelhouse, it was agreed on all sides that if Toll be due, a distress may be taken for it.† However it must be observed, that the party has no remedy for the Toll, if the goods be carried out of his jurisdiction.‡

But such distress need not be of the article chargeable with Toll, as appears in the case of Vinkersterne, *v.* Ebden, there the Corporation of Newcastle claimed a customary Toll of 5d. a chaldron of coals; the party who had the coals in his possession refused to pay; upon which the bailiff of the corporation distrained an anchor, the sails, and cable of the vessel which carried the tollable commodity; in this case there was a special verdict, and when that verdict came to be considered in the court above, it was insisted, that a distress ought not to be of any thing but on that commodity out of which the Toll was payable; but it was adjudged that the distress was well taken, and Holt, Chief Justice, who pronounced judgment, said "*Doubtless any other goods of the person who ought to pay the duty may be distrained, as well as those for which the duty is payable.*" §

* Noy 37, Hickman's case. † Croke, Eliz. 558. ‡ Noy 37. § 1 Ld. Raym

A general *indebitatus assumpsit* will lie for Tolls, as where the plaintiff declared in case of a *Toll-traverse* for passing over the bridge at *Ware*, and that the defendant had carried so many loads of barley over the bridge; that the Toll thereof, at so much per cart, amounted to £40, which the defendant refused to pay, &c. Upon a demurrer, it was insisted that an action would not lie for a *Toll traverse* for passing through the high way without shewing title and consideration; besides, this action was brought for a non-feasance, viz. not paying, &c., for which if any thing is due, an action of debt, and not *on the case*, should be brought. But on the other side it was answered, that an action lies without shewing a title or consideration, and that it should come upon the evidence; and as to the *non feasance*, many cases were cited to shew, that, *case* lies for *non feasance*.

Where the Toll is legally payable to a corporation, or lord of a manor, and the Toll-gatherers are interrupted in the collection of the same, an action of assault lies, and Fitzherbert says, the lord of the manor, &c. in such case shall have trespass *vi et armis* for assault of his servants, their loss of their service, and for the loss of the profits of his Toll, and all in one writ. In like manner, an action of damages will lie where A has a Market and Toll, and B is coming with goods to that market, for which, if sold, Toll would be due, and C hinders B coming to the market. The lord of the manor may have an action,* because of the possibility of damages.

And in an action for disturbance of Toll, the plaintiff need not set out his title, but may declare merely on his *possession*. As where, in an action *on the case* for a disturbance of a *Toll* in a market, the plaintiff declared that L. B. by his indenture demised to the plaintiff the Toll and profit of the fair and market days, within the manor and

* 6 Mod. 49.—2 Ventris, Turner *v.* Sterling.

town of T, for a certain term, and that the defendant disturbed and hindered him from taking divers pieces of wool within the manor and town aforesaid: and after verdict and judgment for the plaintiff, an exception was taken to the *declaration*, that the plaintiff declared of a demise made by L. B., but did not shew that L. B. was *seised* at the time of the demise; but the exception was disallowed by all the Court, because the Plaintiff is to recover damages only, and the right or title of the land does not come in question. Owen 109, *Escot.* v. *Lawrenny.* So where an action *on the case*, stating that the plaintiff was seised in fee of the manor of H., and of a fair held there every Ascension Day, and the defendant disturbed him to take Toll, it was moved in arrest of judgment, that the *declaration* was not good, because the plaintiff does not shew a title to the fair by grant or prescription, and therefore has not any cause of action: but this objection was over-ruled by the court, because it is only a conveyance to the action, and not any claim of the right, as in a *quo warranto*; and therefore the *declaration* is sufficient without a special title comprised therein. Cro. Jac. 43.—Likewise in an action by the owner of an ancient ferry, against a person who erects a new ferry near to his, it is holden, that the plaintiff may declare on his possession, and need not set forth in his *declaration*, that he keeps boats and ferrymen sufficient to carry passengers over.—Willes's Rep. 508, *Blissett* v. *Hart.* 2 Sand. 113, 114, *in notis.*

Where a defendant justified for Toll, but did not set forth *that the corn was sold*, this will be fatal, as in an action of trespass for taking of corn, and the defendant justified, but omitted to state that the corn was sold, and exception being taken for this reason, because none can otherwise be due, unless by special custom; judgment was given for the plaintiff.* And this is another decision clearly shewing that no Toll is due by law, but for goods

* 2 Lutw. Leight v. Pym.

sold, unless by special custom. Also, where a man brings trespass against another, who hindered him from taking the profits of his fair, viz. *pro uno equo vendito* 4*d.* for Toll, and *because he did not shew of whom the buyer bought the horse*, therefore ill by the opinion of the court; for the buyer may have notice of the name of the vendor. *Contra*, in an action of wreck, or against an ostler. But where he justifies the buying of a horse in market overt to change the property, he shall shew of whom he bought.* But it is the better way, that the name of the buyer, as also the name of the thing sold, for which the Toll is due, ought to be shewn in the count.

It is a general rule, that where a man prescribes to be quit of Toll, he ought to shew how it has been allowed and put *in ure*.† A good *consideration* is also another essential ingredient in the case of a party claiming the right of *Toll-thorough*; therefore, if a defendant prescribes for the passing the *highway*, he must shew some cause to entitle him to the taking of it, as by doing something of a public advantage.‡ And therefore where Toll was due in the port of Newcastle, in consideration of the corporation's charge in maintaining the port of that town, this was held a good consideration.‖ But otherwise, in a case of *Toll-traverse*, for it has been decided that a prescription for Toll for setting his goods on land *within my manor*, is good without consideration, as in trespass for taking deal boards, the defendant prescribes to repair a wharf, and *ratione cujus*, to have Toll of 2*d.* per ton, of all merchandize landed within the manor, (but did not say upon what wharf,) and for non-payment, to distrain a reasonable

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* Br. Count. pl. 78.

† Br. patents, pl. 27.

‡ 2 Mod. 144.

‖ 1 Ld. Raym. 674.

part of the goods: the plaintiff replied *de injuria sua propria*, and traverses the prescription upon which they were at issue; and there was a verdict for the defendant. And now it was objected that this prescription was void, because, without any consideration, it being for landing goods on the manor and not on the wharf, so that this is *Toll-thorough*, and without consideration and not good. But the court held that this is rather *Toll-traverse* than *Toll-thorough*, and gave judgment for the plaintiff.*

Hence it is to be observed that in prescribing for Toll, it is essential that the particular kind of Toll should be stated, for if it be *Toll-thorough*, a consideration must be laid, but if it be *Toll-traverse*, a consideration is implied.† And also that *Toll-traverse* may be claimed as appurtenant to a manor by a *que estate*, as in trespass for taking of cattle,‡ the defendant justified by *prescription* to have Toll for all beasts driven over the manor of B. A special verdict found that the manor, &c. was parcel of the possession of the priory of B.—that the prior had such a Toll by prescription as appurtenant to the manor;—that by the dissolution of the monasteries it came to the crown, and so to J. S., in whose right, and as servant to him the defendant justified, and conclude that if the defendant may claim by a *que estate*, then they find for him; if not, then for the plaintiff. It was argued that Toll may be appurtenant to a manor as well as to any other profit *apprender*; and for the *que estate*, though a thing which lies in grant, cannot be claimed by a *que estate* directly by itself, yet it may be claimed as appurtenant to a manor, by a *que estate* in the manor; and to this the court agreed, and gave judgment for the defendant.

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* Lev. 424. Crispe *v.* Belwood. † 2 Mod. 143. ‡ 1 Mod. 231.

Verdict.—If it be found that a corporation, &c. are bound to repair, &c., the thing on account whereof the Toll is to be paid, it is sufficient without finding that it was *then* in repair, for it is the *obligation* which lies on them to do the thing, and *not the performance* of the thing itself, which is the consideration of the duty, per Holt, C. J.—in 1 Lord Raym. Vinkernsterne *v.* Ebden.

APPENDIX.

I. ACTS OF PARLIAMENT ON TOLLS AND CUSTOMS.

II. RESOLUTIONS OF THE IRISH HOUSE OF COMMONS.

III. THE DOCKET OF THE CITY OF DUBLIN TOLLS AND CUSTOMS, AND MARKET DUES.

APPENDIX.

I.

ACTS OF PARLIAMENT.

3 Edw. I. c. 31. (English and Irish.)

If any person take outrageous Toll contrary to the common custom of the realm in market towns, if it be the king's town which is let in fee farm, the king shall seize into his own hand the franchise of the market; and if it be another's town and the same be done by the lord of the town, the king shall do in like manner; and if it be done by a bailiff, without the commandment of his lord, he shall restore to the plaintiff as much more for the outrageous taking as he had of him; if he had carried away his Toll and shall have forty days' imprisonment, touching citizens and burgesses to whom the king or his father has granted murage to enclose their towns, which take such murage otherwise than as it was granted unto them; and of this are attainted, they shall lose their grant for ever, and shall be grievously amerced.

25 Hen. VI. c. 3.

AN ACT,

That none shall take Custom but within Cities, Boroughs, or Merchant Towns, where there is Authority to take Custom. Rot. Parl. cap. 17.

Also at the request of the Commons, for that many people of this land of Ireland do take and levy sundry customs of merchants passing and going with their merchandise through the king's highway, against right and reason, it is ordained and agreed, by the authority of this present Parliament, that no man be so hardy henceforward to take or levy, or cause to be taken or levied, any such custom of merchants or of other people, in the king's highway or elsewhere, but within cities, boroughs, or other merchant towns, where the said merchandizes be bought or sold, or bought to be sold there, *as they have power and sufficient authority to take and levy such Customs.* And if any do the contrary, and therefore be attainted, he shall be constrained and compelled by authority of this same Parliament, to pay for every penny so taken or levied, twenty shillings, whereof the king shall have the two parts, and he from whom the said Custom shall be taken shall have the third part.

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4 Anne, c. 8.

CLAUSES OF AN ACT

To regulate the taking and exacting Tolls throughout this Kingdom, and to prevent engrossing Coals in the City of Dublin.

Whereas the exacting and receiving Toll for any sort of goods or cattle droven or carried through any city,

corporation, market town, or other place within the realm, where such city, corporate, or market town, at their own costs and charges, do not keep up and repair some public bridge or bridges, over which such goods or cattle shall be droven or carried, is greatly prejudicial to the subjects of this realm, and a discouragement to trade in general. For remedy whereof, be it enacted, &c., that from and after the 24th day of June, in the year of our Lord, 1705, no Toll shall be demanded or received by any body politic or corporate, or other person or persons, for any cattle, goods, or merchandises whatsoever, that shall be droven or carried into or through any city, borough, market town, or other place where the same shall not be sold, consumed, or slaughtered.

§ 2. Provided always, that where any person or persons, or bodies politic, heretofore lawfully could demand or take any Toll for any cattle or other goods, driven or carried over any bridge or bridges, for or in respect of such person or persons, or body politic, being obliged at his or their own costs or charges, and not at the costs and charges of any county, county of a city, or county of a town, to keep such bridge or bridges in repair; that in such case such person or persons, or body politic, may receive and take such reasonable Toll for such cattle or goods driven or carried over such bridges, as he or they might have done by law before the passing this Act, and not otherwise.

§ 3. And be it further enacted, by the authority aforesaid, that in all cases *where any cattle shall remain unsold at any fair or market, that it shall be lawful for the owners or drivers thereof to carry away such cattle as shall remain unsold, without paying any Toll whatsoever.*

§ 4. And be it further enacted, by the authority aforesaid, that in case any body, politic or corporate, or other person or persons whatsoever, shall presume to take, demand, or collect any Toll contrary to this Act, that every

such offender shall forfeit for the first offence the sum of ten shillings, to be demanded before a justice of the peace within six days after such offence is committed; and for the second, and every other offence, after conviction, the sum of five pounds, to be demanded also within the time aforesaid; one moiety thereof to the party injured, and the other moiety for the use of the poor of the parish wherein such offence shall be committed; to be recovered by distress and sale of the offender's goods, on conviction before any one or more justices of the peace of the county wherein such offence shall be committed, by confession of the party offending, or by oath of two credible witnesses, to be taken before such justice of the peace, who is hereby empowered and required to administer such oath, and to hear and determine such complaint. And in case any justice of the peace to whom such complaint shall be made as aforesaid, shall refuse or wilfully neglect to put this Act into execution, according to the true intent and meaning hereof, every such justice of the peace shall for every such neglect or refusal forfeit the sum of twenty pounds; the one moiety thereof to her Majesty, her heirs and successors, and the other moiety to the party aggrieved; to be recovered by bill, plaint, or information, in any of her Majesty's courts of record, in which no essoign, privilege, or protection, nor more than one imparlance shall be allowed.

§ 5. And for preventing all frauds and deceits that may be practised by such persons who shall drive or carry away cattle, goods, or merchandise, into any city, borough, or town corporate, and shall there refuse to pay the accustomed Toll, under pretence that such cattle, goods, or merchandises are only to be driven through such city, borough, or town corporate, and shall after sell or dispose of all or any part of such cattle, goods, or merchandise in such city, borough, or town corporate, be it enacted by the authority aforesaid, that every such person or persons who shall offend therein, shall for the first offence forfeit ten shillings, being duly convicted thereof before any one

justice of the peace or chief magistrate of such city, town, or borough wherein such offence shall be committed; and for every second or other offence that shall be committed after such conviction as aforesaid, the party so offending shall forfeit the sum of five pounds, to be recovered and levied as aforesaid.

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4 Anne, c. 11.

AN ACT

Against Horse-stealing, and to prevent the Buying and Selling of stolen Horses, and for Punishing all Accessaries to Felons.

For preventing horse-stealing, which is now grown so common, as neither in pastures nor closures, nor hardly in stables, the same are free from stealing; which is occasioned by the ready buying of the same by several persons in open fairs or markets, far distant from the owner, and with such speed, as the owner cannot by pursuit possibly help the same. For remedy whereof, be it enacted by, &c., that the proprietor, farmer, or chief keeper of every fair and market overt within this realm, shall, before the 25th day of December, 1705, and so yearly, appoint and limit out a particular and certain open place within the town, place, field, or circuit, where horses, mares, geldings, colds, and fillies have been, or shall be used to be sold in any fair or market overt, in which said particular and certain open place aforesaid there shall be by the proprietor, farmer, or keeper of the said fair or market, put in and appointed one sufficient person or persons to take Toll, and to keep the same place from ten of the clock before noon until sun-set every day, of the aforesaid fair and market to enter the sale, gift, or exchange of every

horse, mare, gelding, colt, or filly, sold, exchanged, or put away in every of the said fairs or markets, upon pain to lose and forfeit for every default the sum of twenty shillings; and that on the bargain, exchange, gift, contract, or putting away of every such horse, mare, gelding, colt, or filly, so sold, exchanged, or put away in any fair or market as aforesaid, within this realm, all the parties making the bargain, exchange, gift, contract, or putting away of every such horse, mare, gelding, colt, or filly, shall be present; and also the same horse, mare, gelding, colt, or filly, so sold, exchanged, given, or put away, shall be produced before such person deputed and appointed as aforesaid; and when they are all present, and not before, such book-keeper, toll-keeper, or other person shall write, or cause to be written in a book to be kept for that purpose, the names, sur-names, and dwelling-places of all the said parties, and the colour, with one special mark at least, of every such horse, mare, gelding, colt, or filly, on pain to forfeit at and for every default contrary to the tenor hereof, twenty shillings; and that the said person or persons so deputed or appointed to be keeper of the said book, shall within one day next after such fair or market, bring and deliver his said book to the proprietor, farmer, or chief keeper of the said fair or market, who shall then cause a note to be made of the true number of all horses, mares, geldings, colts, and fillies sold, exchanged, given, or put away at the said market or fair, and shall there subscribe his name or set his mark thereunto, on pain on every default therein, to forfeit twenty shillings.

§ 2. And be it further enacted by the authority aforesaid, that the sale, gift, exchange, or putting away, after the twenty-fifth day of December, 1705, in any fair or market overt, of any horse, mare, gelding, colt, or filly that is or shall be stolen, or feloniously taken away from any person or persons, shall not alter, take away, or

change the property of any person or persons to or in any such horse, mare, gelding, colt, or filly, unless the said horse, mare, gelding, colt, or filly shall in the time of the said fair or market wherein the same shall be so sold, given, exchanged, or put away, openly ridden, led, walked, droven, or kept standing, by the space of one hour together, at least betwixt ten of the clock in the morning and the sun setting, in the open place of the fair or market wherein horses are commonly used to be sold, and not within any house, yard, back, side, or other private or secret place, and unless all the parties making the contract, bargain, gift, or exchange in the said fair or market shall come together before such book-keeper, and also bring the horse, mare, gelding, cold, or filly, so sold, exchanged, given, or put away, at the same time before such book-keeper as aforesaid, to the open place appointed for the book-keeper, and there enter, or cause to be entered, their christian names, sur-names, dwelling-places, in manner aforesaid, with the colour, colours, and one special mark at the least, of every the same horses, mares, geldings, colts, or fillies, in the keeper's book for that purpose as aforesaid, and that no person, after the said twenty-fifth day of December, 1705, shall in any fair or market sell, give, exchange, or put away any horse, mare, gelding, colt, or filly, unless the book-keeper or chief officer of the same market or fair, shall and will take upon him perfect knowledge of the person that so shall sell, or offer to sell, give, or exchange any horse, mare, gelding, colt, or filly, and of his true christian name, sur-name, and place of dwelling or residence, and shall enter all the same, his knowledge, in a book there kept for the sale of horses; or else, that he so selling, or offering to sell, give, exchange, or put away any horse, mare, gelding, colt, or filly, shall bring to the book-keeper one sufficient and credible person that can, shall, and will testify and declare unto and before such book-keeper, that he knoweth the

party that so selleth, giveth, exchangeth, or putteth away such horse, mare, gelding, colt, or filly, and his true christian name, sur-name, mystery, and dwelling place, and there enter, or cause to be entered in such book, as well the true christian name, sur-name, mystery, and place of abode, dwelling, or residence of him who so selleth, giveth, exchangeth, or putteth away such horse, mare, gelding, colt, or filly, and that no book-keeper, or other person employed in that service, shall enter any sale, gift, exchange, or putting away of any horse, mare, gelding, colt, or filly, unless he knoweth the party who so selleth, giveth, exchangeth, or putteth away such horse, mare, gelding, colt, or filly, and his true christian name, sur-name, mystery, or place of his dwelling or residence, or the party who shall so justify or avouch, as is herein-before enacted; and such book-keeper or other person shall give to the person so buying, or taking by gift or exchange such horse, mare, gelding, colt, or filly, requiring and paying three pence for the same, a true and perfect note in writing, of all the full contents of the same, subscribed with his hand, upon pain that the person making any untrue testimony or avouchment in the behalf aforesaid, and every person so selling, giving, exchanging, or putting away any horse, mare, gelding, colt, or filly, without being known to the book-keeper or other officer aforesaid, or without bringing such a voucher or witness, causing the same to be entered as aforesaid, and every book-keeper, toll-keeper, or other officer of fair or market neglecting to do his duty, shall severally forfeit for every such default, the sum of twenty shillings; and also every sale, gift, exchange, or other putting away of any horse, mare, gelding, colt, or filly, in fair or market, not used in all points according to the true meaning of this Act, shall be void; the said several penalties to be recovered before the justice and justices of assize in the several places where they sit; and where they do not sit, then before the justices of the peace at their several quarter sessions, and levied by their respective warrants by distress on

the goods of every person making default, and sale of such goods, returning the overplus, if any, to the party so distrained.

§ 3. And be it further enacted by the authority aforesaid, that the judge and judges of assizes, in their several and respective circuits, and the justices of the peace of every other place and county where the judge or judges of assize do not sit, shall respectively have authority in their respective assizes and sessions, within the limits of their authority and commission, to inquire, hear, and determine all offences against this statute.

§ 4. And be it further enacted by the authority aforesaid, that all the penalties in this Act shall be one half to the poor of the parish where the offence is committed, or other public work, as the said judge or judges of assize, and justices of the peace in their said sessions shall respectively order; and the other moiety to the person who will sue for the same before such judge or judges of assize, or justices of the peace at their sessions aforesaid.

§ 5. And for as much as buyers and receivers of stolen goods and chattels do oftentimes harbour, convey away, and conceal the principal felons, so that they cannot be convicted of such principal felonies, and thereby such buyers and receivers and other accessaries to such felonies, have escaped all manner of punishment, which hath greatly encouraged the buying and receiving such stolen goods and chattels; for remedy whereof be it therefore enacted by the authority aforesaid, that from and after the said twenty-fifth day of December, 1705, it shall and may be lawful to prosecute and punish every such person and persons buying or receiving any stolen goods or chattels, knowing the same to be stolen, or that shall otherwise be accessary to such felony before or after the fact, as for a misdemeanor to be punished by fine and imprisonment, although the principal felon be not before convicted of the said felony, which shall exempt the offender from being

punished as accessary, if the principal shall be after convicted.

§ 6. And be it further enacted by the authority aforesaid, that if any harbourer of any felon shall discover and prosecute any two or more such harbourers, so as they shall be taken, and shall be convicted of harbouring as aforesaid at the prosecution of such discoverer, that then such harbourer so discovering and prosecuting shall, by virtue of this Act, be pardoned and acquitted for his former crimes of harbouring only; any thing in this Act to the contrary notwithstanding. This Act to continue in force for five years, and from thence to the end of the then next Session of Parliament, and no longer.

Made perpetual by 6 Anne, c. 12.

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4 Anne, c. 14.

CLAUSE OF AN ACT

For regulating the Weights used in this Kingdom, and that Salt and Meal shall be sold by Weight.

§ 3. And be it enacted by the authority aforesaid, that before the first day of November, 1705, there shall be appointed in every city, borough, or market town within this kingdom, by the chief magistrate of the same, except in places where the Tolls and Customs belong to any other person, and in such case by the person or persons to whom the Toll or Customs of such city, borough, or market town doth belong, one honest and discreet person who shall be weigh-master in the said city, borough, or market town, who shall be sworn justly, truly, and indifferently to weigh all goods, wares, and merchandises as shall be brought unto him between buyer and seller; for the doing whereof he shall and may take and receive for every draught weigh-

ing under a hundred weight, a halfpenny; and for every draught weighing one hundred pounds and upwards, one penny.

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25 Geo. II. c. 15.

CLAUSES OF AN ACT

For buying and selling of all sorts of Corn and Meal, and other Things therein mentioned, by Weight; and for the more effectual preventing the Frauds committed in the Buying and Selling thereof.

§ 5. And for the more easy weighing of corn in the city of Dublin, and in other cities and market towns within this kingdom, be it enacted by the authority aforesaid, that the chief magistrate of the city of Dublin shall, at the expense of the said city, before the said first day of August, 1752, erect four sufficient beams, with proper scales thereunto, and a competent set of weights, made of iron, and sealed by the proper officer for weighing corn, in such convenient place or places within the corn markets of the said city: and two or more such beams, scales, and weights on Aston's-quay, within the said city, for weighing all sorts of corn; and from time to time to keep the same in good and sufficient repair for weighing with; and for the use of which no greater prices shall be paid or taken than in this Act are hereafter expressed and appointed, under one hundred pounds penalty each term.

§ 6. Enacts—that in the cities and towns of Cork, Waterford, Limerick, Belfast, Londonderry, Newry, Sligo, Galway, Drogheda, Dundalk, Wexford, Navan, Athy, Naas, Lisburn, Clonmell, Ross, and Youghall, and all the other market towns in this kingdom, the chief magistrate for the time being shall provide one or more just and true

balance or iron beam, with scales, and a competent set of weights, made of iron, under fifty pounds penalty every assizes.

§ 7. Provided always, that for weighing corn or things at such scales, *no more shall be paid than one halfpenny for every draught weighing under one hundred, and one penny for every draught weighing one hundred or upwards.*

§ 12. And whereas the custom of selling potatoes by measure hath been found very inconvenient, and is attended with many frauds and abuses, to the great detriment of the poor of the kingdom: for remedy whereof be it enacted by the authority aforesaid, that from and after the said first day of August, 1752, all potatoes, in cities, towns corporate, and market towns, and elsewhere, shall be sold and delivered by weight, and not by measure, or in any other way whatsoever; and that such weight shall be by the avoirdupoise pound, fourteen pounds whereof shall make a stone, and eight stone one hundred, *which potatoes shall be weighed without fee or reward, at the beams and scales of the said respective places,* to be erected and kept pursuant to this Act.

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1 Geo. III. c. 17.

CLAUSES OF AN ACT

For reviving, continuing, and amending several Temporary Statutes, and for other Purposes therein mentioned.

§ 10. And whereas it is very difficult, as the law now stands, to obtain impartial trials in cities, in cases where the right to tolls, duties, or customs, claimed by the respective corporations of such cities, come in question: be it enacted by the authority aforesaid, that no issue shall

hereafter be tried by a jury of any city, in any action or suit concerning any Tolls, Duties, or Customs, claimed by the corporation of such city, but every such issue shall be tried by a jury of an indifferent county, to be appointed in the court in which such action or suit shall depend.

§ 25. And whereas great abuses have prevailed in cities and towns corporate in this kingdom, by the exacting of several unreasonable and excessive Tolls of corn, grain, and other goods and merchandises, not warranted by law, charter, or usage: for the remedy whereof be it enacted by the authority aforesaid, that the mayor or other chief magistrate of every city and town corporate, shall cause a schedule of the Duties, Tolls, and Customs, claimed by the corporation of such city or town corporate, to be hung up in some conspicuous part of the market-house or market-houses of such city or town corporate, on every market day, for one month next ensuing every Michaelmas day, and in case of neglect so to do, such mayor or other chief magistrate shall for every such neglect forfeit a penalty of ten pounds sterling, to be recovered in a summary way, by civil bill at the next assizes, by any person or persons who shall sue for the same.

§ 26. That if any officer of any corporation, farmer of Tolls, or Toll-gatherers, shall exact from or compel any person or persons to pay any Duty, Toll, or Custom, or Perquisite, not mentioned or comprised in such schedule, to be hung up as aforesaid, such officer, farmer of Tolls, or Toll-gatherer, shall for every such offence forfeit the sum of five pounds sterling, to be recovered by civil bill at the next assizes, by any person from whom any unlawful Duty, Toll, or Custom, or Perquisite, shall be so exacted.

§ 27. And whereas the progress of the linen manufacture has been in many cases retarded by a scarcity of fuel, be it enacted, &c., that all turf, furze, and timber, in faggots for fuel, shall pass into and through every city and

town, free from all Toll, Custom, or Perquisite whatsoever, claimed by any officer or member of such corporation.

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3 Geo. III. c. 34.

CLAUSES OF AN ACT

For the better Regulation of the Linen and Hempen Manufactures.

§ 10. And that if any ouncils shall be made use of in any fair or market, in order to distinguish or ascertain the fact or denomination, or weight of any linen or hempen yarn, exceeding in value two shillings the pound weight, such ouncil shall be forfeited, and every person making use of the same as aforesaid, shall forfeit the sum of ten shillings for every time he or she shall so make use of them.

§ 50. And be it enacted by the authority aforesaid, that all linen, yarn, and linen cloth, which shall be hereafter sold or bought in any fair or market, shall be sold and bought within the custom gates or custom gaps of such fair or market; and all linen, yarn, and linen cloth, which shall be sold or bought, coming to any fair or market, and not within the said custom gates or gaps, shall be forfeited.

§ 56. And that no Toll, Custom, or Duty whatsoever, shall be paid or demanded, for any flax-seed or hemp-seed, flax, hemp, or cotton, or any cloth made of linen or hempen, or cotton yarn, or cloth made of linen or hempen yarn and cotton mixed, kelp or pot-ashes, wheels, reels, hackles, or looms, for or by reason of their being brought to, or kept in any market or fair, or for the passage of them or any of them, over any bridge, or through any city or place whatsoever, (turnpike gates only excepted,) and

that if any person shall demand, exact, or take any Toll, Custom, or Duty whatsoever, contrary to the true intent and meaning hereof, every person so offending shall, for every such offence, forfeit the sum of forty shillings.

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11 and 12 Geo. III. c. 31.

CLAUSE OF AN ACT

For enabling certain Persons to carry on and complete the Grand Canal.

§ 29. That no Duty, Rate, Toll, or Custom whatsoever, save the Rates herein mentioned, shall be taken for, upon, or out of any goods, merchandises, commodities, or other matter whatsoever, which shall or may be carried by the said navigation, to or from any place whatsoever.

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27 Geo. III. c. 15.

CLAUSE OF AN ACT

To prevent Tumultuous Risings and Assemblies, and for the more effectual Punishment of Persons guilty of Outrage, Riot, and Illegal Combinations, and of Administering and Taking Unlawful Oaths.

§ 6. And be it further enacted, that any person or persons, not duly qualified by law to administer oaths, who shall administer or cause to be administered, or tender or cause to be tendered to, or by threats, promises, persuasions, *or other undue means, cause, induce,* or procure to be taken, by any person or persons, any unlawful oath or solemn engagement, *upon a book or otherwise,* and

being by due course of law thereof convicted, shall be adjudged guilty of felony, and may be transported for life; and every person who shall take any such oath or solemn engagement, as aforesaid, not being thereto compelled by inevitable necessity, and being by due course of law thereof convicted, shall be adjudged guilty of felony, and suffer as a felon, and may be transported for seven years.

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30 Geo. III. c. 29.

CLAUSE OF AN ACT

For the better enabling the Royal Canal Company to carry on and complete the Royal Canal, from the City of Dublin to Tarmonbury on the River Shannon.

§ 15. Provided always, that any thing herein contained shall not extend, or be construed to extend, to the depriving the corporation of the city of Dublin of any Toll or Custom that they have hitherto been entitled to receive, on goods brought into, or carried out of the county of the said city of Dublin.

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32 Geo. III. c. 29.

To prevent Abuse in the Collection of Tolls.

"Whereas corporations frequently authorize persons of little or no substance to collect Tolls, to which they claim to be entitled, and whereas such Toll-gatherers compel many persons to pay Tolls to which such corporations are not entitled by law, and when suits have been instituted against such Toll-gatherers for such exactions, by the persons aggrieved thereby, such Toll-gather-

ers have been defended by, and at the expense of such corporation, and, after judgment had been obtained against such Toll-gatherers, they have run away, and the plaintiffs have been left without any redress for the injury they have sustained; to prevent which practices for the future, be it enacted by, &c., that from and after the first of May, 1792, as often as any Toll-gatherers shall seize or detain any goods or merchandises, for or upon account of any Tolls claimed by a corporation, it shall and may be lawful to and for the person or persons who shall think himself or themselves aggrieved thereby, to apply to the mayor or chief magistrate of such corporation, to be informed whether such Toll-gatherer has acted under the authority of such corporation or not, and such mayor or chief magistrate is hereby required to give a certificate thereof to the person or persons so applying. And in case such mayor or chief magistrate shall refuse to give such certificate, or shall certify that such Toll-gatherer has acted under the authority of such corporation, then it shall and may be lawful to and for the person or persons who shall think himself or themselves aggrieved thereby, to join the treasurer or chamberlain of such corporation with such Toll-gatherers in any action or replevin which he or they may be advised to bring; and in case he or they shall obtain judgment in such action or replevin, by default or otherwise, he or they shall have the like remedy against such treasurer or chamberlain as against such Toll gatherer, such treasurer or chamberlain shall not be permitted to plead *non cepit* in such action or replevin; and in case such mayor or chief magistrate shall certify that such Toll-gatherer did not exact such Toll under the authority of such corporation, that then it shall and may be lawful to prosecute such Toll-gatherer for a misdemeanour, as a person raising money upon the subject without lawful authority."

52 Geo. III. c. 134.

CLAUSE OF AN ACT

For the better Regulation of the Butter Trade in Ireland.

§ 17. And whereas the weighing, examining, and branding such empty cask or casks, and cask or casks of butter, are attended with great expense and trouble; be it therefore enacted, that the weigh master or weigh masters of each city, town corporate, place of export, and market town for the time being, shall have and receive from the person bringing the same to be weighed and branded, or from the owner thereof, the sum of one penny, and no more, for every such empty cask so weighed and branded: and for the weighing and branding every cask of butter, two pence; and for tasting, proving, and marking the quality, one penny, to be paid to the person so tasting, proving, and marking the said butter; and that no butter shall be packed, sold, or exposed to sale, in any cask exceeding in weight more than eighty-four pounds in the gross; and that the said weigh master or weigh masters, his or their deputy or deputies, shall not brand any empty cask which, when full of butter, may weigh more than eighty-four pounds gross, nor less than twenty-eight pounds gross; and that the tare of every such cask or casks shall be twenty pounds weight per hundred weight on the gross weight thereof, or to be deducted in that proportion, though it shall weigh less; and that upon refusal to pay the respective fees aforesaid, or any of them, by the person or persons liable by this Act to pay the same, it shall and may be lawful for such weigh master or weigh masters, his or their deputy or deputies, taster or tasters, to detain such cask or casks until satisfaction be made, according to the true intent and meaning of this Act; and that every cask or casks shall have

the staves thereof as nearly of an equal thickness as may be; and that the head and bottom of such cask shall be of due thickness, in proportion to the size of such cask or casks; and if any cask of butter which shall be brought to any of the weigh houses aforesaid, shall have the butter in it packed above the riddle of such cask, such cask of butter shall not be weighed until the surface of such butter shall be reduced to a level with the corner edge of such riddle; and in case the tare marked on any cask of butter which shall be brought to any of the said weigh houses to be weighed, shall not be in the proportion aforesaid to the gross weight of such cask, it shall be lawful for the said weigh master or weigh masters, his or their deputy or deputies, and he and they are hereby required to erase such tare from such cask, and to mark and brand thereon such tare as shall bear that proportion to the gross weight thereof, which by this Act is required.

§ 27. And whereas by several Acts now or lately in force, weigh houses and weigh masters have been long established in the liberties of *Saint Sepulchre* and of *Thomas Court* and *Donore*, which said liberties are situate within the county of the city and county of *Dublin*: and whereas it may happen that weigh houses and weigh masters may have been established by virtue of certain laws and customs in force in certain other liberties in *Ireland*, and it is expedient that weigh houses should be continued within all such liberties, and be subject and liable to the same regulations to which any weigh house or weigh master, to be erected, established, appointed, or continued in any places by virtue of this Act, is or may be liable or subject; be it therefore enacted, that the lord of any manor, or seneschal of any liberty, under and by virtue of any law or custom in force at the time of the passing of this Act, and which shall have been put in force or acted under for the space of six years before the passing of this Act, shall respectively, according to such law or custom,

have full power and authority to appoint one weigh master for each and every such manor or liberty, for butter and tallow, to weigh, brand, and mark all such casks and commodities, and take and receive all such sum and sums of money for weighing, branding, and marking the same, as any weigh master or weigh masters nominated and appointed, or to be appointed by, or in pursuance of this Act, can or may have, exercise, take, or receive by virtue of this Act; and after such casks or commodities shall be weighed, branded, or marked by the weigh master of the said respective liberties as aforesaid, such casks or commodities shall and may be exported in such sort and manner as if weighed by the weigh master of any place under the direction of this Act, any clause, matter, or thing in this Act contained to the contrary notwithstanding; which said weigh masters and their respective deputies shall be subject and liable to all the regulations, pains, and penalties, to which any other weigh masters or their deputies appointed by this Act, or in pursuance thereof, are subject and liable, under the direction or control of the lord or seneschal of any such manor or liberty respectively.

II.

RESOLUTIONS

OF IRISH HOUSE OF COMMONS ON THE SUBJECT OF TOLLS.

EXTRACTS FROM IRISH COMMONS' JOURNALS.

"6° *Die Aprilis*, 1635, *O. S.*

"ORDERED, upon question, that the excessive taking of Tolls and Customs in fairs and markets, in corporations and other places throughout the whole kingdom, be presented to the Lord Deputy, by way of petition of remonstrance, in the name of this house, humbly to desire his lordship to take the same into consideration, and to examine and regulate the same, as shall seem best for the ease of the subject."—Vol. 1. p. 190.

"2 *Die Septembris*, 1662, *O. S.*

"Reported from the committee of grievances, that in obedience to an order of reference upon a petition exhibited by several persons against William Harvey, scavenger of the city of Dublin, for exacting more Toll upon all sorts of grain and malt than of right did appertain; and having heard both parties and their witnesses, what could be said or proved therein, did find, "*That anciently, and of right, there was no more Toll due than as much as*

could be taken out of the sack with the hand to the wrist of the arm ;" and it appearing that Toll is now, and of late hath been taken by two Toll dishes, the one containing about five pints and a half, and the other about four pints and a half.—" *That anciently, no Toll was taken but in the market, and upon market days,"* but of late Toll hath been taken by force, without respect to the market or market days, and in all places within the jurisdiction of this city, as well without as within the city. " That anciently the sword bearer took but so *much out of each parcel of wheat as was necessary for a sample for the mayor, to put an assize upon bread ;"* but of late he hath exacted two handfulls, without which he has refused to give a ticket to the countryman to carry out of the market his corn; all which said particulars were judged by the said committee to be grievances."

" Ordered, upon question, that this House do agree to the report of the committee of grievances, and hereby vote the several particulars, so reported, *to be public grievances."*

" Ordered, upon question, that William Harvey, scavenger of the city of Dublin, and the sword bearer to the mayor of the said city, be attached by the serjeant at arms, and *brought to the bar of this House as delinquents,* for exacting and taking of excessive Toll for corn brought to this city; and that the Speaker sign a warrant to that purpose."—V. 2, p. 159.

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29 *Die Decembris,* 1662, *O. S.*

" Ordered, upon question, that the petition of the mayor of the city of Dublin, about taking Toll from the corn sellers coming to the markets of the said city, be referred to the consideration of the under-named committee." *(Fifteen persons named.)*

"Ordered, upon question, that Edward Clarke, *committed prisoner* by order of this House to the serjeant at arms, upon a contempt *upon his exacting Toll* from corn sellers coming to the markets of this city, *contrary to a former vote of this House* in that behalf, be forthwith set at liberty; the mayor of Dublin, &c. having, by their petition, humbly submitted the whole matter to this House, and prayed his enlargement." V. 2, p. 240.

Die Marti, 1663, *O. S.*

"Report from the committee appointed to take into consideration the petition of the mayor of the city of Dublin, &c. concerning the regulation of the Toll; that, after great debate about the same, they agreed upon the particulars following:—

"That the Toll taken for the corn brought to and *sold in the market* of Dublin, out of every barrel of wheat, bere, and barley, be a sealed quart, struck; and out of every barrel of all other grain, three pints, struck; and for the better regulation thereof, *no Toll be taken for corn bought in the country, and brought to the city for the private spending in a family.*"

"The Toll of corn not to be taken in any other place but in the market, or where it is housed."

"The Toll of the sword bearer is disclaimed by the petitioners."

"The taking of any *more than one Toll* of corn for the same corn, is disclaimed by the petitioners; only the farthing a sack of corn for the custom of the thorough Toll is to be taken."

"No Toll to be taken in the market but in the presence of the owner or servant."

"That corn brought into the market, and paying

Toll, but not sold, may be either left in the town-hall, or carried away by the owner."

"That no money be taken for putting the unsold corn in the common room."

Sir William Davis, Recorder, assured the House, that when the Toll came to be taken according to the manner proposed in the report, *the Tax now laid upon the inhabitants of this city for cleansing the streets, would be taken off.*

"Ordered, upon question, that this House do agree to the above report of their committee, and that his grace would be pleased, by act of state, to empower the persons concerned to take and receive the Toll, as it is therein expressed, *and not otherwise.*" V. 2, p. 296.

"26 *Die Octobris*, 1692, *O. S.*

Reported from the committee of grievances, that they had come to the several resolutions following:

"Resolved—That the taking of a pint of corn by Alexander Gordon, sword bearer of the city of Dublin, by colour of his office, out of every barrel that comes to the said city, or the liberties thereof, is illegal, extortious, and a great grievance."

"Resolved—That the taking of more than one sealed quart, struck, out of every barrel of wheat, rye, bere, and barley, and the taking of more than three pints, struck, out of every barrel of other grain brought to and sold in the market of Dublin, was, and is, illegal, oppressive, and a great grievance."

"Resolved—That the taking of the Toll by Thomas Rogers, one of the Toll-gatherers of the city of Dublin, by the two brass measures unsealed, produced before the

committee, each of which contains above two quarts, out of each barrel of wheat, and all other grain brought into the city of Dublin, is illegal, and a grievance." V. 2, p. 612, 673.

" 17 *Die Septembris*, 1693, *O. S.*

" Reported from the committee of grievances, that they had taken into their consideration the matter concerning Alexander Gordon, of Dublin, and had come to the resolution following, viz.—

" Resolved—That it is the opinion of this committee, that the taking of a pint, or any other quantity of corn, out of each sack, by Alexander Gordon, his deputy, or any under him, by way of Toll or otherwise, is extortious and illegal, to which the House did agree.

" Ordered—That Alexander Gordon be taken into the custody of the serjeant at arms attending this House."—V. 2, p. 688.

" 26 *Die Septembris*, 1695, *O. S.*

" A petition of Richard Smith, John Stubbs, and others, on behalf of themselves and others of the city of Dublin, now on the table, complaining of an undue exaction of Toll or Duty, by one William Cloud, an under officer of the Lord Mayor of the city of Dublin, from the petitioners, to their great oppression, read.

Ordered—That the examination and consideration of said petition be referred to the committee of grievances, and that they report their opinion thereon to the House." —V. 2, p. 688.

" 12 *Die Octobris*, 1695, *O. S.*

" Reported from the committee of grievances, that they had come to a resolution concerning the Toll taken by the city of Dublin, as followeth :

" Resolved—That it is the opinion of this committee, that the taking of more than one sealed quart, struck, of Winchester measure, out of every barrel of wheat, rye, bere, and barley, and the taking of more than three pints, struck, out of every barrel of other grain brought into, and bought and sold in the city or liberties of the city of Dublin, was and is illegal, oppressive, and a great grievance.

" A petition of the lord mayor, sheriffs, commons, and citizens of said city, being likewise presented and read, praying they may be heard at the bar of the House by their counsel, as to the said Toll.

" Ordered—That the consideration of the said report be adjourned till Thursday morning next, and that the city be then heard by their counsel at the bar of this House, as is desired."

" 21 *Die Novembris*, 1695, *O. S.*

" The House proceeded to the consideration of the report from the committee of grievances, concerning the Toll of this city.

" And a motion being made, that the city be left to law, to try their right to the Toll of all grain demanded by them, and the quantum, it passed in the negative."

6 *Die Octobris*, 1703, *O. S.*

Doctor Coghill reported from the committee of grievances, that they had come to several resolutions, which he read in his place, and after delivered in at the table, where the same were again read, and are as follow :—

" Resolved—That it is the opinion of this committee, that the receiving or exacting Toll or Custom for cattle in any market, town, or place where the same are not sold, is a grievance."

To which resolution the question being put, the House did agree.

" Resolved—That it is the opinion of this committee, that the receiving any Toll or Custom for the driving cattle, or carrying any sort of goods through any market town or high road, where the same are not to be sold, is a grievance; except where the persons receiving such Toll do, and ought to repair bridges, on account of receiving the same."

To which resolution the question being put, the House did agree, with an amendment:

" Resolved—That it is the opinion of this committee, that the receiving or exacting of Toll or Custom for the bringing of any goods whatsoever, into any market town, where the same are not to be sold, is a grievance."—V. 3, p. 36.

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28 *Die Februarii*, 1703, *O. S.*

" Resolved—That no Toll ought to be paid for driving any cattle, or carrying any goods to or from any city, corporate town, or other place where the same are not to

be sold, unless such city, or corporate town, or other place, at their own cost, and not at the charge of the county, repair and keep up some public bridge, over which the said cattle or goods do pass."

"Resolved—That exacting or taking such Toll or custom *is against the law, and an high misdemeanor.*"

"Resolved—That it is the duty of the justices of her Majesty's Court of Queen's Bench, (every term,) the justices of assize in their several circuits, and the justices of peace at their quarter sessions, to give in charge an Act made in this kingdom in the 25th year of the reign of King Henry the VI., entitled, "An Act that none should take Custom but within cities, boroughs, or merchant towns, where there is authority to take Customs."

IRISH PARLIAMENTARY DEBATES.

12th March, 1792.

A BILL from the Lords, to prevent frauds in the collection of Tolls, being read a first time,

Mr. P. Smith called on the representatives and friends of the cities and corporations of the kingdom, to pay particular attention to this bill. It was calculated, he said, to smooth the way to prosecution against those corporations, and to give infinite trouble to their officers and magistrates.

The Solicitor General thought the bill a good one, and so simple as to be within the obvious comprehension of the plainest judgment in the house. Its only object was, to

enable the owner of any goods or merchandise that should be seized for Toll, to apply to the mayor or other magistrates of the corporation, requiring him to signify by a certificate, whether the officer seizing acted with his concurrence or not? which certificate, if the magistrate should refuse to give, it should be lawful to join him with the officer in a suit at law, and he should be responsible to the complainant. This measure he thought highly useful, *for to his own knowledge, great extortion had been committed by the officers of several corporations; and when a verdict had been obtained against those officers, they had ran away,* and there was no person to be found responsible for the mischief that had been done.

Mr. Prendergast Smith said, there were several articles on which it was still a disputed point, whether Toll should be paid or not; in such, it was unreasonable to require the magistrate to become responsible for the legality of demanding the Toll.

Mr. Bowes Daly thought the principle of the present Bill so fair, that he could not object to it.

Mr. Bagwell and Sir Richard Musgrave spoke in favour of the Bill.

Mr. Charles O'Neill thought it was unnecessary to consult the corporation on this Bill, for it was natural to suppose they would oppose it, as tending to make them responsible for acts of oppression, *the profits of which they may now share without being answerable for them.* Prosecutions for extortion were now of no efficacy against a corporation, *and in many instances they persevere in demands after a verdict has been obtained against them.* The present Bill, he observed, went not to determine what Tolls were or were not payable, but merely to fix a responsibility for oppressive exactions.

Two motions were made—one by Mr. Smith, that the Bill be read a second time on Saturday next; the other

by the Solicitor General, that it be read a second time to-morrow. On the first a division took place, when there appeared,

Ayes,	-	-	8
Noes,	-	-	43
Majority,		-	35

The second reading was then ordered for next day.

III.

ADJUDGED CASES AND LAW AUTHORITIES.

Cro. ELIZ. 558.

HEDDY *v.* WHEELHOUSE. Trin. 38 ELIZ. Rot. 963.

Trespass for the taking of a cow—the defendant justifies, because the town of Northampton is an ancient town, and that king Henry VII. *Anno* 11 *Regni sui*, granted to the Mayor and Burgesses of Northampton, *unam feriam annuatim*, (one fair yearly,) to be holden upon the feast of Saint Hugh, *cum omnibus libertatibus, et liberis consuetudinibus, ad hujusmodi feriam spectant, vel pertinent*, (with all liberties and free customs to the like fair belonging or appertaining)—and shews that at such a fair there holden, J. S. sold that cow to the plaintiff, whereupon he demanded a penny for Toll; and because the defendant refused to pay that penny for Toll, he distrained that cow, as bailiff, for the non-payment. And the plaintiff thereupon demurred in law. The sole question was, whether by this grant there be any Toll to be demanded? For, if it were due, it was agreed on both sides that a distress might be taken for it; and that the defendant, as bailiff, and one of the corporation, might well distrain for it. But it was argued for the plaintiff, that Toll was not demandable, unless by grant from the king, or by prescription—and it cannot be here by prescription, because it is a fair newly created—nor by grant, for there be not any words of grant of Toll—and it is not any liberty, or custom of common right appertaining to a fair, and therefore it passed not by the general words, *cum omnibus libertati-*

bus, &c. But it was argued for the defendant, that Toll is a thing of common right, due for the entry of things sold in fairs or markets, and for the better knowing of the things sold, and into whose property they be passed: and therefore, by a grant of a fair, *cum libertatibus ad feriam pertinent, &c.* it well may pass. And of common right a penny shall be paid for such, unless in places where nothing, or a greater sum is by prescription to be paid.—*Vide* 9 *H. VI.* 45 *&* 12 *Edw. IV.* 9. Wherefore, &c.

Popham—Toll is not a thing of necessity, nor incident to a fair, *for there be many places where no Toll is paid;* and if Toll had used to be paid, no doubt but that by grant of a fair it had well passed, without the words *cum pertinentis.* And questionless also, the king may grant a fair, and that Toll shall be paid, although it be a charge upon the subject; because his subjects, (viz. the Venders,) have benefit and ease by such fairs; *but the king cannot appoint a burdensome Toll,* but it ought to be a *petit* sum, as a penny or two pence, which are the smallest coins, or of lesser, but not of any greater value, to charge the subject. But without grant or prescription, Toll is not of common right to be demanded. Wherefore, &c.

Clench, inclined to that opinion.

But, because the other Justices were absent, *Adjournatur, vide residuum postea. Mich.* 39 *and* 40, *Placito* 29.

Cro. ELIZ. 591.

HEDDY *v.* WHEELHOUSE, (*Ante Pasch.* 39, *Pl.* 15.)

The case was now moved again, and after argument at the bar,

Popham, Gawdy, and Fenner, delivered their opinion:

That, by the said grant of a fair, *cum omnibus libertatibus, &c.* Toll is not due nor demandable; for Toll is not

incident to a fair, *as common experience proves, for the greatest part of the fairs in England have not any Toll;* but by express words in the king's grant, the grantee may have Toll; so he may have *poizage*, or *pontage;* for the subjects have thereby a greater benefit for their money than they pay for it, viz. in the one case true weights; and in the other, ease of passage over water, which otherwise was not well fordable, &c.

Absente Clench, it was adjudged for the plaintiff.

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4 DURN. AND EAST. 104.

MICHS. 1791.

MOSELY, BART. *v.* PIERSON.

THIS was an action brought by the plaintiff, claiming Toll for flour and oatmeal sold by the defendant on market days, in an enclosed shed at a public house, and the oatmeal was delivered at the place. Defendant's counsel asked if the plaintiff could give any evidence of Toll having been taken on flour and oatmeal sold, *which had not been brought into the market*, and as plaintiff could not, he was nonsuited. Upon application to set the nonsuit aside, the Judges were of opinion, *that goods sold by sample were not liable to Toll.*

LORD KENYON, C. J. said, "A sale in a market imports that the goods are brought into the market, and ready to be delivered to the purchaser. Now here the claim is for Toll *in specie*, which necessarily implies, that the commodity in regard of which the Toll arises is brought into the market. The grounds on which my opinion proceeds are, that I cannot consider it as a sale in a market, unless it be in the mode in which sales are generally made in markets, namely, by selling the goods which are *brought into the market for the purpose.*"

GROSE, J.—" I am of opinion, that *goods sold in the market* must necessarily mean goods *brought* into the market *and there sold*, otherwise he could not take Toll *in specie*. The precedents cited are strong to shew that the word " Sold," as applied to a sale in market, means a sale of goods, *which are in the market*."

The Mayor and Commonality, and Citizens of the City of London, v. the Mayor and Burgesses of the Borough of Lynn Regis, commonly called King's Lynn, in the County of Norfolk; in error.—1 Bosanq. and Puller, *Rep.* 487.

THIS was an action brought by the corporation of London against the corporation of King's Lynn, for taking Toll from five persons, freemen of London, who amongst other liberties and privileges, had the liberty and privilege, " That they and all their goods should be quit, and free of and from all passage, lastage, and other Customs, throughout England and the king's ports."—In Easter term, 1789, the cause was tried at the bar of the Court of Common Pleas, (England,) 1 *H. Bl.* 266, when a verdict was found for the corporation of London. The judgment was, " That the citizens, and all their goods, should be quit of yielding such Toll, &c."—On a writ of error brought to the House of Lords, the judgment of the Court of Common Pleas was, by the unanimous opinion of the Judges, affirmed.

N. B. The writs and the declaration are stated at length in *H. Blacket. Rep. C. B.* 206, together with the subsequent proceedings in the Court of Common Pleas; also see 4 *Durnf. and East*, 130, being the same case removed in error to the Court of King's Bench, from the judgment of the Court of Common Pleas.

KING *v.* BURDETT, Vin. Ab. Tit. "Toll." 20.

Information against *Burdett*, farmer of Newgate market, for extortion, in *taking divers sums* of the market people for rent, *for the use of the little stalls in the markets*, and divers great sums for fines, and was found guilty. It was held by the Court B. R. and by *Holt*, Ch. J. at Guildhall, that if the defendant erect several stalls, and does *not leave sufficient room for the market people to stand and sell their wares*, so that for want of room they are forced to hire the stalls of the defendant, the taking of money for the use of the stalls in such cases, is extortion; but if the people have room enough clear to themselves, to come and sell their wares, but for their *further convenience*, they *voluntarily* hire these stalls of the defendant, without any necessity compelling them, there it is no extortion, though the defendant takes a fine and rent for the use of them. *The law has not appointed any stalls for the market people, but only that they shall have the liberty of the market*, which the defendant does not abridge, having left them room enough, besides the place where the stalls are set, and *then*, if they will enjoy the convenience of the stalls, they must comply with the defendant's terms.—*Lord Ray, Rep.* 148, 149, *Hill*, 8 *and* 9, *W.* 3.

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2 Strange, 1171.

HOLLOWAY *v.* SMITH.

In trespass the defendant justifies a distress for Toll, and sets forth a Custom in *Daventry*, to hold a fair on St. Augustine's day and take Toll; and that Queen Elizabeth,

reciting all this, had granted them two new fairs, one on the Tuesday after Easter, and the other on St. Matthew's day, *with all profits, commodities, liberties, and free customs. ad hujusmodi ferias pertinen.* On demurrer the justification was held ill, for Toll is not incident of common right, and therefore not within the words of reference; and being new fairs, upon which no Toll is granted by *express words*, the Custom cannot extend to them, so the plaintiff had judgment.

The party has no remedy for the Toll, if the goods are carried out of his jurisdiction.—*Noy.* 37, *in Hicksmon's Case vide* 20*th Hen. VI.*

July 22, 1815.

RECORD COURT—CARRICKFERGUS.

MARQUIS OF DONEGAL *v.* ROBERT MONTGOMERY.

This came on to be tried before Baron M'Clelland. It was brought by plaintiff, as owner of the markets in Belfast, against the defendant, for setting up another market to the injury of plaintiff.

Counsellor Holmes for Defendant.

The patent gave right to enjoy all Tolls, emoluments, &c., generally, but it made no specification of particular Tolls payable by order or ancient custom. Mr. Holmes produced and cited a case in point, from *Comyn's Digest*, *V.* 4, *p.* 183, which proved that Toll was payable only on cattle and not on provisions, in which the learned judge appeared fully to acquiesce.

Charge by the judge for defendant.—Verdict accordingly.

V5 P44 - But by custom payable on all goods id - ib:

January 3, 1816.

ROBERT SHEA, IN REPLEVIN, *v.* JOHN CLAUDIUS BERESFORD, Esq. AND PETER DOYLE.

MR. SMILEY, on behalf of the plaintiff, said, this was an action in replevin, for detaining a cart-harness, five bags of flour, and one hundred weight of sugar, and the defendants suffered judgment to go by default. It would appear that this was a case where substantial and exemplary damages should be given.—It was absolutely necessary for the public good that exemplary damages would be given; if the Toll demanded in this case was paid, it would have been an exaction; for many years past the persons who farmed the Tolls of the city of Dublin, have extracted from the public considerable sums of money, which they are neither by law nor charter entitled to, and in several instances they have succeeded, because these exactions have been committed on the property of the lower orders of the community, who in general are poor and illiterate persons, and unable to contend; but wherever those unjust exactions have been resisted, they generally endeavoured to compromise with the persons who resist their claims. The facts of the case were very few; in the year 1809, an attempt of this description was made on the property of Mr. Darley, a brewer, at Stillorgan, and also on the property of the present plaintiff; and when the then farmers of the Tolls and Customs found that legal proceedings were intended to be adopted to obtain redress, they entreated that no proceedings would be taken, but that the matters in dispute should be submitted to arbitration, to which Mr. Darley, Mr. Shea, the present plaintiff, and others similarly situated, consented; and so conscious were these persons of the justice of resisting the claims made, that they allowed the persons claiming Tolls to name the arbitrator; who thereupon named one, who, there

could be no doubt, would take care of the interest of the corporation, namely, the Recorder. In consequence of this nomination, all the parties attended before him, with their law agents and witnesses, and after stating their claims, and going into evidence on both sides, the Recorder decided against their claims, after the most mature deliberation, the parties having attended before him for three days. From the year 1809 until June last, no claim was made from any of the parties who had arbitrated, but in that month the carts of the plaintiff were seized for Toll, whereupon the carter applied to Mr. George Jackson, an attorney, who was employed on the arbitration before the Recorder; and Mr. Jackson, anxious to prevent expense, and conceiving that Mr. Beresford, who now has the Tolls, was ignorant of what had occurred before the Recorder, went to the person who had seized the carts, and remonstrated with him on the illegality of the seizure and the demand made, upon which he liberated the carts, on Mr. Jackson's promise of waiting on Mr. Beresford, (then Lord Mayor of the city of Dublin,) and explaining to him the decision of the Recorder; and on the following day Mr. Jackson waited on Mr. Beresford at the mayoralty house, and in the presence of a gentleman then in company with Mr. Beresford, explained to him the proceedings which took place before the Recorder, at which he seemed satisfied, and said Mr. Shea's carts or goods should not in future be stopped by any of his collectors, and that what had been done was in error.

However, notwithstanding such promise, the seizure for which this action is brought, was soon after made.

The Jury, in this case, gave 12*l.* damages, and the verdict has never been attempted to be set aside.

March 19, 1816.

COURT-HOUSE, KEVIN-STREET.

JOSEPH HANKS, Esq. *v.* MICHAEL SMITH.

Before the worshipful Mark Hare, seneschal of the Liberties of St. Sepulchre.

The parties being in attendance, Mr. Hanks stated his own case. He said his complaint against the defendant was for various extortions committed by the defendant in demanding and enforcing payment of Toll on goods which were not liable to such exactions. On Saturday fortnight his cart was stopped at New-street, and detained for a considerable time in the street until the defendant was paid two-pence, which he (Mr. Hanks) conceived he was not entitled to demand.

Christopher Byrne, being sworn and examined, said, on the above day he had been stopped with his horse and cart at the Toll-house, New-street, and a demand made upon him by the defendant for two-pence Toll, which he (witness) refused to pay. Defendant detained him in the street better than a quarter of an hour, when he at length let him go, on his promising to pay him as he returned. On his return he made another demand of it, which he still resisted, when the defendant desired him to keep the two-pence as if from him (defendant), and tell his master he had paid it.

Alderman Beresford (who appeared with the defendant) stated, that as there was no payment proved to have been made, the plaintiff consequently made out no case; but to shew that he was not afraid to meet the question in any tangible form, he would join in any issue that could be devised to try the legality of it, and put all further contention at rest.

Mr. Hare said, that he sat there merely to decide pe-

cuniary differences, amounting to not more than five pounds; the present question, therefore, did not come within his jurisdiction—if the money had been paid the case would have been different, for then he would be bound to give an order to have the amount refunded, with costs. The corporation of the city of Dublin have as much right to demand Tolls at Cork or Belfast, as they have where the Toll-house is at present in New-street.

Alderman Beresford said, he was aware that his man had no right to demand Toll or Custom at the present Toll-house, it being in the county, for which reason he has given him instructions, (as may be perceived by his letter to Mr. Hanks), to follow all cars to the boundaries of the city before he makes any demand.

Mr. Hanks produced the letter alluded to, which was as follows:—

Mr. Hanks,

Sir—I have been informed by the Toll-gatherer at New-street, that you had refused to pay Toll or Custom on goods going into town; I am aware you may refuse to pay it where the Toll-house is, it being outside the bounds of the city. I have therefore desired him to follow your goods to the bounds of the city, and there distrain them if the man refuses to pay.

If you can devise any method of trying the right, less offensive or troublesome to you, I am ready to adopt it.

I am, your obedient servant,

J. C. Beresford.

Mr. Hanks said, it was a scandalous thing that such fellows as are at present employed at the Toll-houses about the city, should be suffered to abuse and ill-treat all persons who endeavour to resist illegal demands; for his own part, had he been present when his horse was stopped, he would have felt himself justified in cutting the man's arm across.

Alderman Beresford—If you did, and the man died of a lock jaw, you would be hanged for the murder.

Mr. Hanks—I don't know who you are, Sir, but perhaps you deserve to be hanged more than I do.

Mr. Hare—Gentlemen, I request you will consider this as not a place to adopt any personal scurrility towards each other; if you cannot proceed without it, I beg that such discussions shall take place outside this Court.

With regard to this summons, Mr. Hare said, he must dismiss it, *because no money had been taken* by the Toll-gatherer.

Mr. Hanks said, he was told by his man, before he went into the Court, that the money was taken, or he should not have proceeded in this way.

Mr. Hare said, there was another way open to him by which he might obtain redress, and that was by an action for a trespass. The subject of this Toll-house ought to be taken up by the inhabitants of that neighbourhood, and the Toll-house itself presented as a nuisance. If a car is stopped at it for Toll, it will naturally excite a crowd, and a crowd in so small a street as New-street, would be sufficient grounds, in this instance, to present the cause of it to the Grand Jury, who would be bound to indict it as a nuisance.

Mr. Hanks said, he had various complaints of a similar kind, but was not then prepared with the witnesses—the present witness never having driven his cart but once.

Mr. Hanks expresed his determination not to let the business stop here, but on the next court day to sue for various sums which he has heretofore paid, under the suggestion of Counsellor Hare, to bring the case at once before the Grand Jury, in order to have the house indicted as a nuisance.

December 4, 1816.

DIVISIONAL OFFICE, MOUNTRATH-STREET.

WILLIAM DEMPSEY *v.* ROBERT KELLY.

Mr. Crosbie, Attorney for the complainant, stated, that on the 28th of last month the defendant, who is collector of Tolls, stationed by Mr. Manders, Toll farmer at Constitution-hill, top of New-Dominick-street, county of Dublin, demanded and took from the apprentice of said Dempsey, the sum of 2d. as Toll, without right or justice, and under the statute, 4th Anne, c. 8, the defendant subjected himself to the penalty of 10 shillings for the first offence, proved before a Magistrate, and a heavy penalty for the second offence.

Mr. Manders, Toll farmer, admitted the taking of 2d. and that sum was not warranted, nor would he justify the defendant's conduct, but insisted that this (see the Act of 4th Anne, c. 8, in the Appendix, which is clearly applicable to all parts of the kingdom) Act did not apply to the City of Dublin; and as he did not understand Acts of Parliament, he requested time, in order to consult the City, and to employ the city Agent, and come prepared with counsel, any day the Magistrate would adjourn to.

——— Eagle examined—Is the apprentice of Mr. William Dempsey, on Thursday the 28th of November last, witness and John Darcy were carrying between them on a bier, eight window sashes; at the head of New Dominick-street, Kelly the defendant met him, and demanded 2d. Toll for the sashes; witness replied he had not 2d. about him; Kelly then demanded a pledge for the 2d., and required witness to give his handkerchief off his neck; witness replied, he would see him in the Canal first; however Kelly would not suffer witness to pass until

he left with him one of the sashes;—he came home, told his employer, who gave witness the two pence on Saturday last; witness paid Kelly the money, and got the sash.

SIR W. STAMER examined the witness to know whether Kelly took the sash himself, or did witness hand it to him.

Mr. Crosbie—That is not material; the complaint here is, not for taking the sash, it is for taking the money.

Darcy, next witness, corroborated the former in every particular.

The case on the part of the complainant being gone through, Mr. Manders requested that an adjournment might take place, and the case was accordingly adjourned till Thursday next, when counsel should be heard on both sides, if the corporation thought proper so to do.

But the case never came on again, as the defendant submitted, and paid the penalty.

Saturday, May 31, 1817.

COURT OF COMMON PLEAS.

FRANCIS PILSWORTH AND JOHN PILSWORTH, *v.* MICHAEL LACY AND WILLIAM HENRY ARCHER, Esq. as the Treasurer and Chamberlain of the Corporation of the City of Dublin.

THE following most respectable Jury (of whom five were freemen of the city of Dublin) being sworn:—

James Nugent, Esq.	Charles Smith, Esq.
Edward Butler, Esq.	Thomas Clarendon, Esq.
James Chambers, Esq.	Andrew Richey, Esq.
Thomas Browne, Esq.	Thomas Locke, Esq.
Joseph Atcheson, Esq.	Horatio Jesson, Esq.
Richard Cooke, Esq.	Samuel Oldham, Esq.

Mr. Perrin—Gentlemen of the Jury, if this were an ordinary case—if it were a mere occasional trespass, and not part of a system long pursued, I should content myself with calling the witnesses, and letting them detail the circumstances of the trespass; but, gentlemen, the peculiar nature of this case, the illegal claims from which it has arisen, the outrages by which these claims have been asserted, oblige me to go more fully into the question.

The plaintiffs are Mr. Francis Pilsworth and Mr. John Pilsworth; one of whom resides at the Royal Canal harbour, the other at Mullingar. They are extensive dealers, and have been engaged in that business a considerable time. In the course of business they purchase corn in market towns, upon, and in the neighbourhood of the Canal, and send it to their stores in Dublin, for the purpose of vending it out, or exporting it; they either sell it in the Dublin market, or vend it by retail at their stores, or export it. For the corn sold in the Dublin market, they uniformly, and without objection, paid Toll; and, with respect to the corn sold at their stores or exported, they have been obliged frequently to pay Toll to a large amount. For, gentlemen, the corporation of Dublin claim to be entitled to Toll of two kinds—Toll on the sales in market, and Toll, or what they call Custom, on what is carried to the market, or elsewhere, into, or through the city. *It is a curious circumstance, and a circumstance which has occasioned considerable loss to the plaintiffs, that, on transporting corn purchased at Mullingar, which never passed on wheel or other carriage through Dublin, but by the Canal that verges on a corner of it, to ships in the river for exportation, they have been obliged to pay Toll!* They felt this to be a grievous extortion—they made repeated proposals to have the claim amicably investigated and ascertained, determined instantly to submit to it if decided against them; but these proposals were rejected; and it now becomes my duty to expose to you the nature of the claim.

Tolls are of two kinds—Tolls payable on the sales at the market, to which the owner of the market is entitled, *for the accommodation he affords to the buyer and the seller for providing a place to expose articles for sale, and, if necessary, to store them.* This tax is payable on the goods *actually sold* at the market; for, unless the article be *actually sold*, though it goes and remains in the market, *no Toll is payable.* This Toll still subsists, because, by the consideration on which it was founded, the convenience afforded has not been discontinued. Besides this Toll, there was another ancient Toll, called *Toll Thorough*, payable on the passage of goods through, or over the precincts, or any part of the precincts of corporate towns. Anciently, most corporations were entitled to make this charge for all goods on entering the city, whether passing through, or remaining there, under the head of murage, pontage or paviage; and it was levied for enclosing towns with walls, for paving the streets, and building and repairing the bridges. The tax grew out of the convenience and accommodation thus afforded, *and, with that accommodation, it expired.* Accordingly, in the reign of Queen Anne, when murage being totally discontinued, it became the custom to pave the streets, and build and repair bridges from funds raised by general taxes, and these works were no longer at the expense of the corporations; an Act of Parliament was passed, which put an end to Toll thorough. To shew that the claim for Toll thorough is commensurate with the consideration afforded, I shall cite an authority. [Here the learned Counsel cited a case, *Com. Digest.* 361.] The statute of 4th Anne, c. 8, recites, That the claim of Toll thorough is a *prejudicial exaction*, and a discouragement to trade in general; and it enacted, *That no Toll should be taken except for articles sold in the market*, and no Toll thorough to be claimed but where the corporation is bound to keep up a bridge in fit repair, at their own costs or charges, and not at the costs and charges of any county, county of a city, or county of a town.

The great objects of this Act are salutary and obvious. Tolls continued to be collected, and paid out of the pocket of the subject, and applied by corporations *to their private purposes*, though the purposes for which the tax was established ceased to exist, but yet the corporations were unwilling to give up their claims or relinquish their exactions, which they had applied to very different purposes; and notwithstanding this Act of Parliament abolishing it, many corporations, and particularly the corporation of Dublin, did exact the tax. This conduct became a very general subject of complaint, and whilst a Parliament was held in this country, frequent petitions were presented to it on this subject, and particularly one in the year 1662, against William Harvey, who is thereby complained against, and styled Scavenger of the city of Dublin. That petition was presented against the Scavenger for exacting more Toll than he was entitled to, and therefore a report by a committee was adopted by the whole House, which states, "*That anciently no Toll was taken but in market, and on market days; but* OF LATE, *Toll hath been taken on every day, and at all places within the city, and this extortion it expressly finds to be illegal, and unjust;*" and thereupon the Scavenger was attached by the House of Commons, and the City appeared at the Bar by Counsel, and after a full hearing, it was decided by the House of Commons, THAT THE CLAIM WAS UNFOUNDED. Six or seven other petitions were presented at different times, respecting this outrageous claim, against the Scavenger, Sword-bearer, and others of the city Officers. The House of Commons, feeling the crying injustice of the claim, *made examples by punishing those officers*, and the claims were for a time abandoned, but have been since renewed. The corporation have, for the last Seventeen years, *gradually increased* their illegal claims, and of late, within the last two years, they have devised a plan of evading the statute of Anne altogether, which was, by subjecting all corn that comes

within their precincts to their exactions. Formerly one might say, *this is not market-day—this is not the market-place—this corn was neither bought nor sold in your market*, and they had no reply. But now, from every one who brings corn into or through the city, whether for sale, exportation, or private use, the corporation demands this illegal charge, throwing it on the party to look for redress to an action. They know that in ten thousand cases it will be submitted to, because no man likes to go to the expense and hazard of litigation to resist it, and most persons had rather submit to the loss than engage with so powerful an adversary. They act on this principle, hoping, that after a few years, if the tax should be submitted to, they may set it up as an usage. But it is not merely on corn that they charge Toll—they charge it on almost every other article; and in one particular instance of Mr. Pilsworth's furniture passing from his house in New Dominick-street, to his house in the country, they obliged him to pay Toll for it.

Gentlemen, Mr. Pilsworth felt this to be a grievous extortion. He is not litigious. He had no wish to contend with the corporation in an action at law. The Toll-gatherer was summoned before the magistrates, themselves members of the corporation, under the Statute of Anne, and in one particular instance, when the penalty brought for the extortion was ten shillings, *the prosecutor was bought off.* The Toll-farmer compounded the matter in private, *paying a large sum to prevent an adjudication against the claim.* Mr. Pilsworth did all in his power to try the question without going into the superior courts; he told them, *that if they shewed the Recorder's opinion in favour of their claim, he would submit; he told them if they produced the Charter, warranting their claim, he would submit; he offered to select one lawyer and let them select another, and to leave the matter to their decision.* The committee of Tolls would come into no terms.

On the 30th of August last Mr. Pilsworth sent his dray into town with butter, corn, and potatoes; five barrels of the corn happened to have been for a freeman who purchased it at Mr. Pilsworth's stores; some of it was for a gentleman in Donnybrook, and the other articles had been sent along the canal by a nobleman, from his seat in the country to his house in town; on passing New Dominick-street, where, in fact, there is no Toll-house or Toll-board, seven or eight men rushed out of a public-house, some of them armed with pistols and others with bludgeons; they laid hold of the horse, collared the driver, and demanded Toll; he asked what it was, and said he was willing to pay any charge that was reasonable or fair; he said he understood a farthing a sack was the fair charge, and that he was willing to pay it; and he produced threepence, the amount of the Toll which would have been payable if the articles had been sold in market. This they instantly refused, and they assaulted and knocked down the man. Mr. Pilsworth happened to be coming up at the time by mere accident; he stopped to inquire the cause of the riot, when he was also assailed, and one of the ruffians put a cocked pistol to his breast and threatened to shoot him. Happily Mr. Pilsworth was more cool than the leader of this lawless gang. Some of his men hearing of the riot, ran down from his own stores; and how did he act?—did he resist?—did he repel violence by force? No, he told his men that it was an illegal outrage, and that he would appeal for redress and protection to the laws of the land; and he charged them, as they valued places in his employment, to return immediately to the stores and not to interfere. We will clearly prove that *this corn was never brought to the Dublin market; never was bought or sold there; and by the established law of the land, it was not liable to any Toll.* It was a pithy expression of Lord Chief Baron Comyn, *that the king can't grant a Toll for goods not brought to market;* but though the king

cannot grant it, the corporation demand it. We will prove that they have done so with violence and outrage, and it will be for you to say whether they shall continue to do so with impunity. Your verdict, gentlemen, will shield your fellow-citizens from imposition and injustice, or it will arm the corporation with powers which the law never gave.

Gentlemen, we lodged examinations for the assault, and then the man behind the curtain, appeared and proposed to adjust the matter and ascertain the claim without delay, provided Mr. Pilsworth gave up the prosecution. He did so; but no step was taken to shew or ascertain the right; and at length seeing no hope of redress by other means, he then instituted an action in the Court of Exchequer against Alderman Beresford, who was the Toll-farmer—against Alderman Archer, who was treasurer of the corporation—and against Michael Lacy, the collector. We filed our declaration in the Court of Exchequer early in Michaelmas Term last; they went into that court behind our back, and without serving any notice, on the last day of that term; they asked time to plead, and the court granted them time till Hilary Term. On the first day of that term they made a similar application for further time, without giving us notice of their intention. They had counsel who strongly pressed the court to grant their application, and the court was inclined to do so. Counsel for Mr. Pilsworth resisted the application, stated the entire circumstances at full, and pressed on the court the extreme hardship of the case. The corporation still pressed their application; various pretences were urged—that the Recorder required time—that the Charter was long, and that they were a corporation whose rights were invaded. These pretences prevailed, and the corporation got *further time* till the end of that term; that time had nearly expired, and they came into court again to make another application, AND THE NOTABLE GROUND ON WHICH THIS

APPLICATION WAS MADE, WAS, THAT THEY COULD NOT FIND THE CHARTER UNDER WHICH THEY CLAIMED AND HAD EXACTED THE TOLL.

Gentlemen, I have to inform you, that the court granted this application also. It was resisted by counsel on behalf of Mr. Pilsworth; who thereupon seeing no prospect of a termination of litigation there, asked from the court leave to go out of it. After some hesitation and opposition, the court allowed us to discontinue our proceedings there without payment of costs to the opposite party, and thus, gentlemen of the jury, my client, seeking for redress with law, justice, and truth on his side, had the satisfaction of being engaged in litigation, from the month of August to the month of April, without making any progress in his cause. He was advised to institute a fresh action in another court; he did so—in the court of Common Pleas, and the corporation attempted to practise the same imposition on that court which they had played off so often and so successfully in the court of Exchequer; and without serving any notice to Mr. Pilsworth's agent, they, at the latter end of the last term, asked time to plead.

The court of Common Pleas asked, whether they had served notice; and on finding no notice was served, they refused to entertain the application; they refused to make an *ex parte* order behind the back of the opposite party. Disappointed in this attempt, they then served a notice of a motion for time till the first day of the ensuing term. We were prepared to resist that application, but no such motion was ever made, and we accordingly and regularly marked our judgment. Gentlemen of the jury, after their various applications, after a delay of nearly a year, after annoying us by every species of unfair opposition, after every attempt to defeat the ends of public justice, after driving us from the Police Office into the court of Exchequer, and out of the court of Exchequer into the court of

Common Pleas, here at length *they stand before you, confessing the aggression and the wrongs of which we complain!*

I would not have adverted to these circumstances, but that I know the question of right will be brought in, however irregularly, directly or indirectly, on the other side, because I have lately read a proclamation* by the late Lord

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* A copy of that corporation manifesto is annexed;—that it is false, is proved by this fact—that Messrs. Pilsworth alleged the taking to have been *in the city*—so that if there was *any doubt*, the danger was the plaintiff's, for they alleged the taking to be in the city. If it turned out, upon investigation, to be *in the county*, they would have been nonsuited. Besides which, it is to be understood, it was so clearly inside the city, there could not be any doubt of the boundary.

Tuesday, May 27, 1817.

CITY ASSEMBLY-HOUSE, WILLIAM-STREET.

The Lord Mayor, Sheriffs, and the rest of the committee of Tolls and Customs, having read in several papers GROSS *libels* against the corporation of Dublin, for levying Tolls and Customs, alleging it was ROBBERY, and stating that *they had abandoned their right to such Tolls and Customs, by having suffered judgment to go by default in the Court of Common Pleas,* feel it their imperative duty to CAUTION the public not to be misled by such *unfounded* and *malicious* publications.

The action so alluded to having been brought in consequence of their tenant levying Toll in UPPER DOMINICK-STREET, on investigation it was found that he had taken such Toll at a place so near the bounds of the city and the county, that a doubt might arise in which county it had been taken, and therefore the corporation did not persevere in defending that action, as the question of *boundary* was *doubtful.*

But the public are hereby informed that the corporation of Dublin are *determined* to *enforce* their *right to the Tolls and Customs,* which have been paid from TIME IMMEMORIAL, have been established by the finding of a SPECIAL jury, *recognised by Parliament,* and out of which they pay *two thousand pounds a year* towards the paving of Dublin, thereby *relieving* their FELLOW-CITIZENS from an *additional paving assessment.*

By order of the Committee,

ALLEN and GREEN, Secretaries.

Mayor, Sheriffs, and Toll Committee of the corporation, stating, that judgment was obtained against them by default, but that they would not submit, and that the question of right was not decided; but have we not been anxious from the commencement to have the question of right decided, or did we not press and court investigation? But THEY HAVE NO RIGHT, AND THEY KNOW IT—THEY HAVE NO CHARTER, AND THEY KNOW IT. Every effort to have the matter decided without trouble, and without litigation, was made upon our part, and *resited on theirs.* WE OFFERED TO ABIDE THE OPINION OF THE RECORDER. —WE OFFERED TO SUBMIT TO THE DECISION OF TWO LAWYERS.—WE OFFERED TO ABIDE BY THE FAIR MEANING OF THE CHARTER;—BUT ALL THESE OFFERS WERE REFUSED, and here they stand before you, acknowledging the aggression, and without an excuse for their gross and illegal extortion. Is it then too much for me to hope, that you, as conscientious and honest men, will give such a verdict as will, in some degree, compensate my clients for the injuries they have received, and the expense they have been put to, and will at the same time warn these gentlemen how they proceed in acts of outrage and extortion?

Gentlemen, Mr. Pilsworth demands not from your hands any vindictive damages; but at the same time you will take into consideration, that though in the present instance they only took a small quantity of his property, that similar extortions have been a thousand times repeated on him. You will recollect, that Mr. Pilsworth, whom they have so ill treated, pays Tolls to the amount of 300*l.* a year to the corporation.* You will weigh all the cir-

* It is to be remarked, that Mr. Perrin speaks of the Toll merely upon the corn brought to Dublin; but the amount of the Toll paid upon the goods to and from Dublin, through Messrs. Pilsworth's establishment, far exceeded 800*l.* a year!!! To put an end to this imposition, and to relieve the persons who intrust their goods to their care, from the payment of such an immense and illegal charge, was their sole object. It cannot be too often repeated, that

cumstances—you will consider his conduct and his sufferings, and no doubt, your calm and honest verdict will protect the subject, and vindicate the law.—Gentlemen, one word more on the proclamation of the City Assembly House, as it is announced. It is stated in that proclamation, that the corporation pays two thousand pounds a year towards paving the city of Dublin. I DENY IT—they are bound, and ought to pave their markets—they are also bound to pave before the Mayoralty House, and their other possessions, exactly as other owners are—they are bound also to cleanse the streets leading to their markets, of which they get the profits; and you will find that by the Statute, they are bound to pay 2000*l.* not for paving, but for *cleansing* the streets, and that they do not contribute towards the paving but as other owners of property—nay, not so much, only 350*l.* Mighty contribution! Mighty relief to the inhabitants of Dublin! This is the thousands which they pay to the Commissioners of Paving. Gentlemen, I trust you will pay no regard to that proclamation—its assertions are UNFOUNDED and ABSURD—it asserts, that they yielded in this case, because the question of boundary was doubtful. See what truth, what foundation there is for this flimsy pretext. The learned Assessor will sanction me when I tell you, *that if the taking was not within the city, where we have laid the venue, we should on a trial have been* NONSUITED, and that if we had set up any objection to their proceeding on the ground of boundary, that we should have fur-

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Messrs. Pilsworth offered on their part, and on the part of their country friends, to submit the ascertaining the rights of the corporation to the opinion and decision of even *the Recorder*—an able lawyer—*their own officer.* This offer is an high but merited encomium on the Recorder. Messrs. Pilsworth knew that the corporation could not impose on him—and that he would not allow them to impose on the Public. Their refusal of that offer speaks for itself. Counsellor Perrin says further, "THEY HAVE NO RIGHT, AND THEY KNOW IT.—THEY HAVE NO CHARTER, AND THEY KNOW IT."

nished them with complete defence to the action. Gentlemen, they did not defend the action, because they had no defence, no right, and they have issued this publication to affect this inquiry, to blind you, and lead you to believe that they have been irregular, but not altogether illegal; that though they have overstepped a little, they are not to be treated as extortioners, but the Plaintiffs merely compensated as for a trifling irregularity or excess in asserting a well founded claim. Gentlemen, they have NO RIGHT, NO COLOUR OF RIGHT, AND THEY ADMITTED IT BY THEIR DEFAULT. They are charged with a gross outrage, an unfounded and violent extortion and seizure of the plaintiffs' property—and THEIR GUILT IS CONFESSED ON THE FACE OF THE RECORD; and it is for you to say, what compensation my client is entitled to. That compensation is not to be limited to the quantity of grain illegally taken out of the plaintiff's sacks. You must look to the outrage committed—to the system of OPPRESSION and IMPOSITION—to the loss my clients suffered in this long course of litigation—to their threats of future persecution. You will award the sum they are entitled to. It is for you to save the citizen from extortion, and the law from violation and contempt. It is for you to say, that the law sleeps not when the poor man demands relief; but that its even and impartial hand protects with equal regard, the rich man and the poor.

Michael Dalton, examined by Mr. FINLAY.—Witness remembers the month of August last year; witness is in the employment of Mr. Pilsworth; remembers having passed, driving a cart at that time, through New Dominick-street; there were oats, potatoes, and butter in the cart. Witness was stopped in the street by Michael Lacy, a man of the name of Thomas Butler, and other persons came up to him; there were six or seven persons; Butler had a stick and a pistol; saw no other person armed; Butler came up to witness, and said, if he did not let go

the horse he would shoot him; he then dragged him off the horse; they then tolled the sack and took corn out of it; they made a demand on witness for Toll; witness offered them a farthing a barrel; they demanded more; he does not recollect whether it was two pence or three pence per barrel they demanded; they took money from witness's companion; they said it was Toll for the corn, potatoes, and butter; they took twelve or fourteen pounds of corn in all; Butler pushed and dragged him, and punched him with a pistol, the other man was knocked down; they took the horse and corn from him.

Cross-examined by Mr. SCRIVEN.—There was but one cart, and it was attended by two men more and witness; one man is sufficient to drive one cart; witness brought the other two men as he was determined to force his way; he was ordered to pay a farthing a barrel, and not more. The man knocked down was flogging the horse before he was handled; witness had hold of the head of the horse, and others lashed him on; witness don't know what else they did. There was no one with Lacy when the horse stopped; witness intended to do the best he could to drive the horse through; in passing, the cart might have gone over witness as well as Lacy; witness can't say how long he was detained; he went with the rest of his load where he was ordered; the remainder of the articles were not hurt.

Re-examined—Witness had no directions to resist the tax by force; he would, no doubt, drive through if he could, but he got no directions to use violence.—Don't know whether it is usual to pay Toll there.

David Nugent, Esq. examined by Mr. PERRIN—Witness recollects walking with Mr. Pilsworth's brother, on the Royal Canal, in the month of August—saw a crowd in Dominick-street; was curious to know what it was about—he and Mr. Pilsworth went down where the crowd was assembled.—Thomas Butler came up to Mr. Pilsworth,

and asked him, did he know him? Pilsworth answeed that he did not.—"No matter," replied Butler, "I know you, and by this and that, I have a mind to shoot you!"—Witness saw Butler strike Mr. Pilsworth's man in the mouth, and cut him.—Butler said he was the king's officer, and could do what he pleased!

Andrew Farrell, Esq. examined by Mr. FINLAY.—Recollects the evening that Mr. Pilsworth's dray was stopt in Dominick-street—was present, and heard the very words expressed by Butler, as sworn by the last witness; witness also saw Butler pursuing a young gentleman, with a pistol in his hand—he also threatened witness, and gave him insolence.

The plaintiffs' Counsel gave in evidence the certificate of the late Lord Mayor, Alderman Shaw, which states, that Lacy acted for the corporation of Dublin, and that they were accountable for all the acts of his in his capacity as Toll collector.

Here the plaintiffs closed their case. Mr. Scriven, for the defendants, observed, that he meant to trouble the Jury but very shortly. He said, they were bound to dismiss altogether from their consideration, all corporate acts of Lacy. So far as Butler was concerned, they were sworn to find a verdict upon credible evidence, and not on the statement of counsel; and what he asked was the evidence which had been brought forward. The witness, Dalton, has sworn that he was directed to force his way without violence. I am willing to give the plaintiffs the full benefit of his testimony. I am willing to admit that he was not desired nor instructed by the Messrs. Pilsworth to use force or violence; but it is before you that he offered a farthing for each sack of corn, and that on this being refused, he attempted to force his way.

We are willing (continued Mr. Scriven) to admit, that the trespass here complained of was committed. The Toll was taken, and if you please to have it so, it was taken

BY FORCE, AND WITHOUT RIGHT; and the question which you have to try is simply this—the amount of the damages sustained by Messrs. Pilsworth. You have been told, that not only in this case, but in a thousand similar cases, Toll has been illegally and unjustly exacted from the plaintiffs. Are you prepared to say, they were illegal exactions? In the present case we cannot contend the question of right. WE DO ADMIT THAT WE HAVE ACTED ILLEGALLY—IT IS SO CONFESSED; but is it because we have been illegal here—does it follow that in all other cases we have acted illegally? Is it law, or justice, or common sense, that you should mulct the defendants not only in damages sustained by the plaintiffs, under the circumstances before you, but in every case where Toll heretofore was demanded by the corporation, and submitted to by the plaintiffs?

Gentlemen, it has been said that this was an unfounded claim of the corporation, but I say it was not *an idle claim*, it was a claim founded on authority; it was a claim which *was often submitted to by the present plaintiffs;* but in this particular instance I must admit, that my clients *had no right to* DEMAND TOLL.—But to this point your verdict ought in justice be confined; you are to give damages for the corn seized by the defendants; but further than this you should not go. The learned gentleman concluded an animated speech, by cautioning the Jury from being led away by the eloquent and forcible statement of Mr. Perrin.

The defendants not having called any witnesses,

Mr. HUBAND, who acted as Assessor to the Sheriffs, charged the Jury. He said, that this was a question of GREAT IMPORTANCE, and of VAST PUBLIC INTEREST—that the defendants having let judgment go against them by default, the Jury were bound to give some damages to the plaintiffs; and the only question they had to decide was, what the amount of those damages ought to be. Here it appears, that the actual property taken was 14lbs.

of corn; but, gentlemen, you are by no means confined to the actual damages sustained, *and, in my opinion, you should not confine yourselves to it.*—And were the plaintiffs persons who were unacquainted with the city, and ignorant of the claims set up by the corporation to Tolls, I would be inclined to give them NOT ONLY HEAVY, BUT EXEMPLARY DAMAGES; because the conduct of the persons employed to exact this Toll *was most improper*, and the outrage they committed *was shockingly disgraceful.* Under all the circumstances of the case, it is for you to see how much damages the plaintiffs ought to be awarded, for some damages they must receive from your hands. Mr. Perrin stated his clients' case ably, and most ably—and were you to be governed by the statement of counsel, I confess, after the impression he must have made, I know not how far your verdict might not extend; but this is a question which you are to determine by other rules, and under the advice of the Sheriffs, I leave the question of damages to be awarded entirely to your own discretion.

The Jury retired for about twenty minutes, and brought in a verdict—Fifty Pounds damages and costs.

Counsel for the plaintiffs—LOUIS PERRIN and JOHN FINLAY, Esqrs.—Agent, Mr. JAMES CROSBIE, 39, Jervis-street.

Counsel for the defendants—Messrs. SCRIVEN and HAMILTON.—Agent, Mr. GREENE.

IV.

A

DOCKET OF THE CUSTOMS

OF THE

GATES BELONGING TO THE CITY OF DUBLIN.

At a Post Assembly held at the Tholsel of the City of Dublin, on Monday the 13th of June, 1763, the following Order was conceived, relative to the under-mentioned Docket, to wit :—

" That from and after the 24th day of June, 1763, all goods and merchandises that are really the property of any freeman of the city, do pass Custom free, into and out of the city, provided such freeman do certify to the collectors of the Customs, the quantity and quality of such goods, and that they are his property; that if any freeman of this city shall presume, after the said 24th of June, to certify that any goods are his property which are actually the property of any other person not free of this city, in order to defraud this city or their farmers of the Customs of such goods, such freeman to be proceeded against by the city agent, as Mr. Recorder shall advise, in order to his being disfranchised for such fraud and breach of oath.

" And it is further ordered—That from and after the said 24th day of June, all raw hides going out of the city to any of the adjacent liberties to be tanned, shall be free from Custom going out; that bark going out of any of the adjacent liberties, to be made use of for tanning, shall like-

wise be free; that all iron going out to the several mills near the city, to be manufactured, and returning to this city manufactured, shall be likewise free from Custom; that all salt, manufactured in Ireland, shall be free from any Custom; that all goods going to be manufactured, and the materials made use of therein, shall be free from custom, if they are returned to this city manufactured; and that the committee be empowered to regulate the docket accordingly."

A.

Of every Sack of ashes, one halfpenny.
Car load of apples, or other fruit, two pence.
Horse load ditto, one penny.
Flasket ditto, on one car, one halfpenny, not exceeding the price of a car load.
Barrel of ale *coming in*, brewed without the city or liberties adjoining, two pence.

B.

Of every Tub of butter, one penny.
Crock or basket of ditto, containing ten pounds or upwards, one halfpenny.
Load of deal boards, exceeding six, one penny.
Load of ditto, under six, one halfpenny.
Car load of brushes, two pence.
Horse load ditto, one penny.
Back load ditto, one halfpenny.
Horse load or car load of bed-mats, two pence.
Back load ditto, one penny.
Barrel of bark, one halfpenny.
Sack of green beans or peas, one halfpenny.
Bull, bullock, or cow, one penny.
Sack of button moulds, two pence.
Flitch of bacon, one penny.
Car load of brooms, two pence.
Horse load of brooms, one halfpenny.
Car load of brandy or other spirits, three pence.

Of every Runlet of brandy or other spirits, on one car, one penny, not exceeding the price of a car load.
Dozen ditto, one penny, not exceeding the price of a car load.
Pedlar's box carried on his back, one halfpenny.
Car load of brass, three pence.
Horse load ditto, two pence.
Single brewing pan, two pence.
Car load of baskets, two pence.
Car load of boymore, two pence.
Car load of bent, one halfpenny.
Sack of brogues, one penny.
Car load of bays, serges, frizes, stockings, &c. three pence.
Pack of flannel, two pence.
Bundle ditto, one penny.
Horse load of frizes, serges, &c. two pence.
Car load of heel blocks or patten boards, two pence.
Car load of bulrushes, two pence.
Back load of ditto, one penny.
Car load of brussels, three pence.
Piece of buckram, one penny.
Horse load of earthen ware, one penny.
Car load ditto, three pence.
Bedstead, one halfpenny.
Dozen of barrows, one penny.

C.

Of every Car load of cheese, three pence.
Hundred weight ditto, one penny, not exceeding the price of a car load.
Horse load ditto, two pence.
Calf, one halfpenny.
Car, to be sold, one halfpenny.
Kish of charcoal, three half-pence.
Horse load of charcoal, one halfpenny.

Of every Car load of candles or soap, three pence.
Horse load ditto, two pence.
Large hair cloth, one penny.
Car load of cradles, two pence.
Car load of chairs, two pence.
Dozen of chairs, one penny.
Bag of corker, one penny.
Sack of cutlins, one halfpenny.
Car load of cyder, three pence.
Single dozen ditto, on one car, not exceeding the price of a car load, one penny
Kish of Kilkenny coal, one penny.
Dozen of woollen cards, one penny.
Hundred of conyfell, one penny.
Barrel of corn, as wheat, oats, &c. one farthing.

E.

Of every Horse load of eggs, one penny.
Clieve load ditto, on backs, one halfpenny.

F.

Of every Horse load of dead fowl, two pence.
Clieve of chickens, carried on backs or arms, one halfpenny.
Dozen of dead fowl, on one car, one penny, not exceeding the price of a car load.
Car load ditto, three pence.
Horse load of fish, one penny.
Car load ditto, two pence.
Salmon, one farthing.
Small basket of fish on one car, one halfpenny, not exceeding the price of a car load.
Trail of figs or raisins, one halfpenny.
Horse load of feathers, two pence.
Car load ditto, three pence.

G.

Of every Crib of glass, two pence.
Back load ditto, one halfpenny.

Of every Load of grass, one farthing.
Goat or kid, one farthing.
Gage of all sorts, two pence.
All manner of grain, per barrel, one farthing.

H.

Of every bag of hops, three pence.
Pocket of hops, two pence.
Small parcel ditto, on one car, one penny, not exceeding the price of a car load.
Horse load of hats, three pence.
Back load ditto, two pence.
Dozen of hats, on one car, one penny, not exceeding the price of a car load.
Cow or bullock hide, tanned or untanned, one halfpenny, not exceeding sixpence in the whole, on one car.
Car load of herrings, four pence.
Barrel ditto, two pence.
Mease ditto, on one car, one penny, not exceeding the price of a car load.
Hog or pig, one halfpenny.
Sucking pig, one farthing.
Load of broad hoops, two pence.
Load of small hoops, one penny.
Load of hay, one farthing.
Firkin or rumlet of honey, one penny.
Crock of ditto, one halfpenny.
Car load of horns, three pence.
Bag of hairsell, one penny.
Cart of hay, one penny.

I.

Of every Car load of iron, three pence.
Horse back load ditto, two pence.
Bar ditto, on one car, one halfpenny, not exceeding the price of a car load.

Of every Bundle of nail rod iron, one halfpenny.
Rod iron per hundred weight, on one car, one penny, not exceeding the price of a car load.
Of every New iron pot, one halfpenny.
Bar of old Iron, one halfpenny.
Car load of iron mine, one penny.
Hundred of horse-shoes, and cart clouts, three farthings.
Hundred of iron shovels or spades, three halfpence.
Car load of iron pots, three pence.
Horse load ditto, two pence.
Hundred trips and brand irons, one halfpenny.
Dozen of griddles, one penny.
Car load of nails, three pence.
Horse load of nails, two pence.
Hundred weight ditto, on one car, one penny, not exceeding the price of a car load.
Hundred weight of wrought iron, on one car, one penny, not exceeding the price of a car load.

K.

Of every Keeve, one penny.

L.

Of every Car load of lead, three pence.
Lamb, one farthing.
Car load of dressed leather, six pence.
Horse load ditto, three pence.
Leaden vessel, one penny.

M.

Of every Car load of merchant's goods not herein particularly specified, being the property of one person, three pence.
Horse load ditto, two pence.
Bundle ditto, or what a man carries under him, one penny.

Of every Barrel of malt, one farthing.
Mill wheel, two pence.
Mill stone, three pence.
Barrel of meal, one halfpenny.

N.

Of every Car load of nuts, three pence.
Horse load ditto, two pence.
Bag ditto, one halfpenny.

O.

Of every Hogshead of oil, three pence.
Runlet ditto, on one car, one penny, not exceeding the price of a car load.
Barrel of oil, two pence.
Car load of oysters, two pence.
Horse load ditto, one penny.
Car load of onions, three pence.
Horse load ditto, two pence.
Flasket ditto, on one car, one halfpenny, not exceeding the price of a car load.

P.

Of every Sack of potatoes, one halfpenny.
Car load of pewter, three pence.
Horse load ditto, two pence.
Car load of paper, three pence.
Horse load ditto, two pence.
Car load of plants, one halfpenny.
Barrel of white peas, one farthing.
Barrel of pitch or tar, two pence.

R.

Of every Car load of white rods, two pence.
Ditto green, one penny.
Barrel of rape-seed, three halfpence.
Horse load of rabbits, two pence.
Dozen ditto, on one car, one penny, not exceeding the price of a car load.
Car load of rushes, two pence.

S.

Of every Barrel of salt, two pence.
Hundred weight ditto, three farthings.
Car load of sheep skins, three pence.
Horse load ditto, two pence.
Dozen ditto, on one car, one penny, not exceeding the price of a car load.
Horse skin, one farthing.
Car load of lamb skins, three pence.
Horse load ditto, two pence.
Dozen ditto, on one car, one farthing, not exceeding the price of a car load.
Car load of slink lamb skins, or kid, two pence.
Horse load ditto, one penny.
Back load ditto, one halfpenny.
Dozen ditto, on one car, one farthing, not exceeding the price of a car load.
Car load of calf skins, three pence.
Horse load ditto, two pence.
Dozen ditto, on one car, one penny, not exceeding the price of a car load.
Load of barrel staves, one penny.
Load of straw, one farthing.
Car load of rabbit skins, three pence.
Horse load ditto, twopence.
Man's back load ditto, one penny.
Dozen ditto, on one car, one halfpenny, not exceeding the price of a car load.
Sheep one farthing.
Dozen of stockings, on one car, one penny, not exceeding the price of a car load.
Load of silver mine, three pence.
Load of flag stones, one penny.
Load of slates, one penny.
Load of marble stones, two pence.
Load of grinding stones, one penny.

Of every Car load of bazils or pelts, three pence.
Horse load ditto, two pence.
Dozen ditto, on one car, one farthing, not exceeding the price of a car load.

T.

Of every Hogshead of Tobacco, three pence.
Horse load or back ditto, two pence.
Single roll ditto, on one car, one farthing, not exceeding the price of a car load.
Hogshead of tallow, three pence.
Barrel ditto, two pence.
Cake ditto, on one car, one halfpenny, not exceeding the price of a car load.
Load of made timber ware, two pence.
Load of timber, one penny.
Load of tazels, two pence.
Back load ditto, one penny.
Cart load of turnips, parsnips, and carrots, one halfpenny.
Car load of trees, two pence.
Horse load ditto, one penny.
Back load ditto, one halfpenny.
Timber stutch or chest, one penny.
Load of tin, one penny.

W.

Of every Hogshead of wine, three pence.
Horse load ditto, two pence.
Single hamper ditto, two pence.
Dozen ditto, on one car, one penny, not exceeding the price of a car load.
Runlet of wine, one penny.
Pack of wool, three pence.
Horse load ditto, two pence.
Pocket ditto, on one car, one penny, not exceeding the price of a car load.

Of every Car load of wadd, three pence.
Hundred of bees' wax, three pence.
Car load of worsted, three pence.
Horse load ditto, two pence.
Hundred of yarn, one penny.

N. B. All Goods coming in for private use, to be exempted from custom.

Examined by
ALLEN AND GREEN, Town-Clks.

The Docket of Toll of every single Barrel of Grain, at the Gates belonging to the City of Dublin.

Wheat.		Oats.		Bere.		Malt.		Meal.	
lb.	oz.	lb.	oz.	lb.	oz.	lb.	oz.	lb.	oz.
3	10	2	4	2	12	2	1	2	9

Barley.		Flour.		Rye, or Meslin.		Crush.	
lb.	oz.	lb.	oz.	lb.	oz.	lb.	oz.
2	12	2	7	3	9	3	12

A Docket of the Petty Customs of the Markets.

Of every Car load of fruit, two pence.
High load of ditto, one penny.
Flasket of ditto, one halfpenny.
Butter standing, per week, two pence.
Root standing, per week, two pence.
Standing for fowl, per week, two pence.
Standing in corn-market, per day, one penny.
Car load of hay and straw, at Smithfield, one halfpenny.

SUPPLEMENTARY APPENDIX.

CHARTERS.

SCHEDULES OF TOLLS.

LAW AUTHORITIES.

HEN. II.	1173.	Granted the first charter of the city of Dublin to the men of Bristol, with liberty to live and reside in Dublin, with all the privileges, &c. of Bristol, and freeing his burgesses of Dublin from Tolls of passage, pontage, and all other Customs.
RICH. I.	1189.	Prince John, (afterwards King John,) while lord of Ireland, confirmed the above.
——	1193.	Prince John confirmed his own and his father's charter.
JOHN.	1200.	Ascertaining the meres and bounds of the city franchises—citizens free from Tolls, Lastage, Passage, and Pontage, grant of *a moiety of the river Avenaliffe to fish on.*
HEN. III.	1216.	Called *Magna Charta Hiberniæ.*
——	1228.	Charter of confirmation of all the foregoing ones, but changing the government of the city from Portrieve to that of Mayor.
EDW. I.	1272.	A mandate from the crown, respecting weights and measures.
——	1281.	Confirmation of King John's charter.
——	1282.	Edw. I.—His discharge of £600 due to the crown by the city, for *their transgressions, in taking four pence for every cart load of grain coming into the city.*—(☞ See the Charter of Edw. II. 1317.)
——	1284.	An inspeximus of several grants of Hen. III.—viz.—A grant of the city and river *Annaliffy* at two hundred marcs a year, with a grant to build a bridge and elect a mayor. The grant of the city and one half of the river which belonged to the king, one half being before granted by King John, *except boat-fishing*, by former grants to others, and mill places reserved, rendering two hundred marcs per annum. Grant of building a bridge. Grant of all the lands contained in King John's charter.

EDW. I.	1284.	An inspeximus of *Edw. I.* that burgesses be free from Toll, Passage, Pontage, Murage, and Custom, throughout England, Wales, and Ireland.
EDW. II.	1308.	An inspeximus of John's charter of the meres and bounds, &c., with a *grant of a moiety of the river Annaliffe.*
——	1312.	*An order* regulating the taking of Customs from Bristol merchants.
——	1314.	Mayor, &c. to have the regulation of bread, beer, weights, and measures.
——	1316.	An exemplification and confirmation of John's charter;—grant of confirmation of half of the *fishing of the river Liffey.*
——	1317.	Grant (8th September,) that the city might take *four pence* for every cart load of grain coming to the city.—☞ *But on the 10th December in the same year there was a grant of indemnity to the mayor, &c. for so doing.*
——	1322	A charter for FOUR YEARS, describing the particular Customs to be taken from the citizens of Bristol on bringing goods to be sold in the city.
EDW. III.	1336.	A charter FOR TEN YEARS, AND NO MORE, describing the Customs to be taken on goods coming to be sold in Dublin, *towards the building of the tholsel and repairing the walls and towers of the city of Dublin.*
——	—	A charter limiting the city Customs to be taken of several kinds of commodities coming to be sold *within* the city of Dublin, for every horse load of corn ¼*d.*—for every ox, cow, or calf ½*d.*, with many other commodities which ought to pay Custom; *this was granted for paving the streets.*
——	1343.	Two grants for *ten years* in reversion of the petty Customs for repairing the walls and streets.
——	1344.	A grant for enjoyment of privileges, as given by all formr charters.
——	1345.	A grant of divers Customs to the citizens for *five years.*
——	1346.	A charter, ascertaining what goods are customable; limited to *five years.*

EDW. III.	1358.	A grant to the citizens, &c. of divers Customs for *fifteen years.*
——	1358.	Do. do. of the petty Customs for paving the streets.
——	1363.	An inspeximus of *Edw. III.* in 37th year of his reign, of John's charter of the bounds and privileges of the city, &c. with a grant of the river.—This charter goes into many particulars, and was granted in consideration of £1 10 paid into the Hanaper.—Original in *town clerk's* office.
——	—	An exemplification of several grants of the Customs of Dublin.
——	1374.	Confirming the charter of *Hen. II.*
——	1375.	A grant to the mayor, &c. of the customs of Dublin and the port thereof.
RIC. II.	1378.	An exemplification respecting foreign merchants, with a confirmation of the said liberties, and their free enjoyment of the same for ever.
——	—	That the city of Dublin should receive Custom of all *venable* things coming to the city for TWENTY-FOUR YEARS.
——	—	A confirmation of King John's charter of the bounds and privileges of the city, with an inspeximus of other charters relating thereto.
——	1379.	By a record of *Edw. III.'s* time, it appears that Mary's-Abbey is within the liberties of the city.
——	1381.	A grant confirming all the charters of the city of Dublin.
——	1395.	An inspeximus of John's charter.
HEN. IV.	1400.	Confirmation of all former charters.
HEN. V.	1414.	Confirmation of the charters of John and *Edw. II.* &c.
HEN. VI.	1427.	An inspeximus of John's Charter, &c.
——	1427.	Two charters of confirmation of former charters, setting forth the bounds of the city and its liberties and privileges, &c.

HEN. VI.	1438.	A grant to the mayor, &c. of Dublin, for *fortifying the walls* and paving the streets, the usual Customs and Duties on merchandize imported into or exported from thence.
——	1442.	An inspeximus of John's charter.
——	1445.	A grant of £6 per year *for repairing the walls.*
——	1459.	A grant of £6 per year FOR FORTY YEARS, out of certain rents for *repairing the walls.*
EDW. IV.	1461.	An inspeximus that the citizens be free from Toll, Pontage, Murage, &c..
——	1464.	A grant to the city of £30 per year, to repair the *walls, gates, trenches, &c.* thereof.
HEN. VII.	1486.	An inspeximus of John's charter, &c.
HEN. VIII.	1510.	A grant confirming all former charters, with many additional privileges.
EDW. VI.	1548.	An inspeximus of Hen. VIII.'s charter of confirmation, with an inspeximus therein of John's charter of the meres and bounds of the city, &c.
P. and MARY.	1554.	Confirmation of *Edw. VI.* and of *Hen. V.'s* charters.
ELIZ.	1582.	Confirmation of Edw. VI. charter; mayor and sheriff's privileges, &c.
CHARLES II.	1665.	A grant of a ferry over the river Liffey, to be held for ever at the rent of *four pounds* per annum.—No other person to keep a ferry-boat, or carry over any one for hire between *Dublin Bridge and Ring's End.* Ferry to be attended from one hour before sun-rising to an hour after sun-setting.
——	1676.	A charter granting the Customs *of the gates of the city.*
——	1676.	An appointment by the Lord Lieutenant (Essex,) of overseers of receiving and returning the Customs of the *gates of the city.*
JAMES II.	1688.	A new charter of incorporation, and confirming all former ones.

EDW. III.	1361.	Murage Charter	Tower of London.
——	1375.	Charter of the staple	Birmingham Tower.
RICH. II.	1396.	Murage charter	No enrolments extant of these three charters, but they are recited by inspeximus in the succeeding grants.
——	—	Charter of Incorporation	
HEN. IV.	1405.	Charter of confirmation	
EDW. IV.	1464.	Like	Tower of London.
RICH. III.	1484.	New charter of incorporation. No enrolment extant, but recited in the subsequent charters.	
HEN. VIII.	1545.	Former charters confirmed and new privileges granted.	
EDW. VI.	1549.	Charter of confirmation	Rolls' Office.
ELIZ.	1575.	New charter granting various privileges ...	Ditto, 20 Eliz.
JAMES I.	1610.	The first charter appointing Sheriffs, and erecting the town into a separate county.	
CHARLES II.	1679.	New charter of incorporation.	
JAMES II.	1687.	Ditto, but inoperative since 1691.	

Translation of Hen. II.'s Charter granted to the City of Dublin in the Year 1173.

HENRY, by the Grace of God King of England, Lord of Ireland, Duke of Normandy and Aquitain, and Earl of Anjou, to the archbishops, bishops, abbots, earls, barons, justices, ministers, and sheriffs, and to all his faithful subjects, French, English, and Irish, greeting. Know ye, that I have given, granted, and, by my charter, confirmed to my subjects of Bristol my city of Dublin to inhabit. Wherefore, I will and firmly command that they do inhabit it and hold it of me and of my heirs, well and in peace, freely and quietly, fully and amply, and honourably, with all the liberties and free customs which the men of Bristol have at Bristol, and through my whole land.

Witness,

William de Braosa,
Hugh de Gundeville,
Reginald de Glanville,
Reginald de Pavilly.
Reginald de Courtenay,
William Fitz-Aldelm,
Hugh de Cressy,
at Dublin.

Translation of the Charter of Richard II. concerning the Bounds of the Franchises of the City of Dublin by a new Inquisition adverted to in Note, p. 15.

RICHARD, by the grace of God, King of England and France, and Lord of Ireland, to all to whom these present letters shall come, greeting; we have viewed, &c. "It has been shewn unto us, on the part of the mayor and community of the city of Dublin, and the jurors upon their oaths say, that the bounds of the city of Dublin are on the east part of Dublin, and on the south part thereof,

namely, the pasture leading to the gate of St. Keivin, and so by the road as far as Kilmerecarigan, and from thence as they are divided from the lands of Donobrooge to the Doder, and from the Doder to the sea, namely to Clarada near the sea, and from Clarada to Reymilan, and from the gate of St. Keivin's-church, by the way northward to a stone-cross, where the *eastern market* anciently used to be kept towards the west, and from thence to a lane near St. Sepulchre's in the passage towards a barn, as far as to a certain old lane, closed up near to the commons of the vicar's of St. Patrick's-church, which extend to St. Patrick's-street, and in the west part of Dublin, from St. Patrick's-church through the middle of the valley to the pool of the house of St. Thomas the martyr, leaving the south gate of the monasteries of Witeschan and Conelan, towards the north on the left hand, and exactly through the middle of the depth of all the said pool, and from the said pool through the middle of a meadow leading to a pasture called le Irendam towards the north, and from le Irendam to the cross of Kilmaynan, by the bounds of the lands of Kilmaynan, and from the said cross along the bounds of the lands of Kilmaynan, to a ford called Tyrrel's-ford, and from that ford between the lands of the church of the Holy Trinity, Dublin, and the land of Kilmaynan unto the water of Amliffy, and from thence, along the said water as far as the ford of Kilmayhane, and beyond the water of Amliffy towards the north by Enolnegannocke, passing into a meadow which leads towards the west as far as the high way passing from Dublin towards Carberagh, and from thence to the barns of the Holy Trinity, and from those barns, along a trench called Rughdicth, to the highway leading from Finglas to the city, leaving the said trench, on the left hand towards the north, and from that highway to the water Glasteynock, and so to a hill towards the north, where the gallows anciently stood, and from thence, through the middle of the

water of Glasteynock, to the highway leading from the said city towards Santreff, and beyond that highway as far as the trench of the land of Clonclyffe, and so along that trench to a green, lying on the north side of the abbatial house of St. Mary, Dublin, and from thence between the green and the said trench, to the middle of the highway, leading from Ostmanton to Tulgin, through the middle of the road of the village of Ballybough, unto an ancient path of an old mill, leaving the abbey and land of Lexinam on the right hand towards the south, and the trench and path on the left hand towards the north, and so along the water of Amliffy, to the Abbey of the blessed Virgin Mary of Ostmanby.

Schedule of Tolls payable at Londonderry Bridge, over Lough-foyle River, agreeably to the 54 Geo. III. c. 230. (Loc. and Pers.) Vol. 5—as referred to in p. 29, (n.)

Former rates to cease, and the following to be collected for every passing or repassing, viz. :—

	s.	d.
For every coach, berlin, chariot, calash, chase, or chair drawn by six or more horses, or other beasts of burden, - -	4	6
Coach, berlin, chariot, calash, chaise, or chair drawn by any lesser number of horses, or other beasts of burden than six, and more than two, - -	3	0
Coach, berlin, chariot, calash, chaise, or chair drawn by two horses, or other beasts of burden, - - -	1	6
Waggon, wain, cart, dray, car, or other carriage with four wheels, drawn by four or more horses, or other beasts of burden, - - - -	2	0

	s.	d.
For every waggon, wain, cart, dray, car, or other carriage with two wheels, drawn by more than two horses, or other beasts of burden, - - -	1	8
Waggon, wain, cart, dray, car, or other carriage drawn by two horses, or other beasts of burden, - - -	1	3
Carriage with two wheels, and commonly called a chaise, chair, gig, or jaunting car drawn by one horse, or other beast of burden - - -	0	10
Carriage with two wheels, and commonly called a chaise, chair, gig, or jaunting car drawn by two or more horses, or other beasts of burden, - -	1	3
Sedan chair, - - -	0	5
Waggon, wain, cart, dray, car, or other carriage drawn by one horse, or other beast of burden, and not laden, -	0	5
Waggon, wain, cart, dray, car, or other carriage drawn by one horse, or other beast of burden, laden, - -	0	10
Sledge, slide, or other carriage without wheels, drawn in any manner, -	0	10

N. B. *Together with 2d. for each animal so employed in drawing such sledge, slide, &c. without wheels.*

And for all carriages whatever drawn in or by any other manner than as aforesaid, -	1	0

N. B. *Together with the sum of 2d. for each animal employed in drawing the same.*

For every horse, gelding, mare, mule, or ass, -	0	2

	s.	d.
For every Drove of oxen, cows, heifers, or neat-cattle, per score, and so in proportion for a greater or lesser number, -	3	4
Calf, hog, pig, sheep, or lamb, -	0	1
Passenger passing over said bridge, except such person as shall be driven in such coach, chariot, berlin, chaise, chair, calash, gig, or jaunting-car, and the driver or drivers thereof, -	0	1
Person passing over said bridge, and carrying or conveying any kish, basket, sack-load, pack, or package of any kind, the weight whereof respectively shall amount to 30lb. - -	0	1½

Martis 13° *die Aprilis*, 1762.

A Schedule of all such Ingate and Outgate Customs, Tolls, and other Duties, which, by Agreement between the Corporation and Merchants of the Town of Galway, are for the future to be paid in lieu of the former Tolls and Customs.

	s.	d.
Out of every *Winchester* barrel containing 4 bushels, or 20 stones of wheat, or meal of wheat, and so in proportion, -	0	2
For every such barrel of bere, barley, malt, or meal of barley or bere, and so in proportion for a lesser quantity, -	0	1
Every such barrel of oats, or 14 stones, or 4 bushels of oatmeal, and so in proportion for a lesser quantity, - -	0	1

The above to be paid in lieu of the Tolls hitherto taken out of said grain or meal.

	s.	d.
All the above grain or meal to pay besides Ingateage, per barrel, - - -	0	0½
The said grain and meal to pay according to the Act of Parliament, per barrel, for weighing, provided the same be weighed.		
All corn bought in the county by maltsters, or any other private persons, to pay, per barrel, Gateage or Custom, (and no other Duty,) -	0	1
Provided the above is not weighed in the market-house.—The maltsters to be sworn before the mayor, to give a just return of all bere, oats, and barley, at the request of the Toll-gatherers.		
For every cow, bullock, bull, or ox, to be slaughtered for market, - -	0	2
Cow, bullock, bull, or ox, to be slaughtered for exportation, - -	0	1
Sheep to be slaughtered for market, -	0	0½
Veal do. do. -	0	0½
Carcass of beef, slaughtered *within* the liberties and brought into the town to be sold, - - -	0	2
Carcass of beef, slaughtered *without* the liberties, and brought into the town to be sold, - - -	0	3
Sheep, to be slaughtered *within* the liberties and brought into the town to be sold, - - -	0	1
Calf, - - -	0	0¼
Large hog, - - -	0	1
Small hog, - - -	0	0½
Goat, - - - -	0	1
Kid, - - - -	0	0½
Lamb, - - - -	0	0½
Raw hide brought into the town to be sold, or to be sold in the suburbs, -	0	1

	s.	d.
For every tanned hide brought into the town to be sold, or to be sold in the suburbs,	0	1

No Custom for tanned hides, tanned WITHIN *the suburbs, bought of tanners living within the suburbs, or brought into the town to be sworn before the Mayor.*

Cwt. of rendered tallow brought into the town to be sold, - -	0	2
Half cwt. of rendered tallow brought into the town to be sold—less to pay in proportion, - - -	0	1
Cwt. cask of butter, - -	0	1
Large do. and so in proportion,	0	2
Bag of wool of 5 cwt. - -	0	4
Do. do. from 3 to 5 cwt. -	0	3
Do. do. from 1 to 3 cwt. -	0	2
Single stone of wool, (and in proportion downwards,) - -	0	1

N. B. *Custom for feathers, as for wool.*

Bag of hops to be sold, - -	0	3
Pocket of do. - - -	0	2
Half bag of do. - - -	0	2
Horse load of bark to be sold at the market, - - -	0	1
Horse load of bark to be delivered at the tanners, - - -	0	0½
Hogshead of wine or spirits brought into the town by land carriage, -	0	3
Pipe or butt of wine or spirits brought into the town by land carriage, -	0	6
Quarter cask or half hogshead of wine or spirits brought into the town by land carriage, - - -	0	2

	s.	d.
For every hogshead of cyder to be sold, -	0	2
Do. of porter, - -	0	3
Do. of oil, - - -	0	3
Half do. - - -	0	2
Hundred stones of Spanish iron, and less in proportion, - -	1	0
Load of fish going into the country, -	0	1
For every lesser quantity of fish going into the country, - -	0	0½
Car load of soap, - -	0	3
Load of soap, - -	0	2
Car load of merchants' goods coming from any other province, and brought into the town, (and no more,) -	0	3
Car load of goods not specified in this Schedule, and which has hitherto paid Custom coming from the province of Connaught into the town, (and no more,) - - -	0	1
Car load of goods going out of the gates,	0	2
And for every horse load of goods, - -	0	1½

But nothing under 50lbs. to pay anything.

All the aforesaid duties and gateage are agreed to be given in lieu for, and so long as no Charter Duties shall be demanded by the Corporation on goods imported into said town, or exported from it, and no longer. It being the intent to ease and improve the trade of said town, for the mutual advantage of both town and country, to establish peace and harmony in said town; as also to declare that no goods imported or exported by sea, to or from Galway, and which shall pay the King's Duties shall be chargeable with any Ingate Customs, Tolls, or Duties, fish as aforesaid only excepted: neither are any provisions coming into or going out of said town, for the private use of any resident in said town, to pay any Gateage,

Custom, Toll, or Duty; neither shall there be any Gateage, Custom, Toll, or Duty paid for any turf, milk, eggs, poultry, fresh butter in rolls or prints, hay, or straw; nor shall any fish coming from the *Claddagh* to be sold in the public fish market, be liable or chargeable with any Custom, Toll, or Duty of any kind, either at the gate or at the market.

	s.	d.
Timber of all kinds going into the town, or for the use of the town for ships or boats, to pay nothing.		
Small parcels of boards, to pay nothing.		
Five boards, - - -	0	0½
Ten do. - - -	0	1
Fifteen do. - - -	0	1½
A car load of do. - - -	0	2
Liquors, under a dozen of bottles, to pay nothing, but above that, and under a horse load ¼*d.* per dozen.		

COM. JOUR.

Tolls payable at the Bridge of Wexford, over the River Slaney.—By 58 *Geo. III. c.* 123, *Loc.* v. *Pers. vol.* 3.

	s.	d.
For every coach, chaise, or phaeton, drawn by two horses, - -	2	6
Four wheeled carriage, drawn with one horse - -	1	1
Curricle, drawn with one horse, -	1	7½
One horse chair, with wheels, -	1	1
Chaise marine, drawn with one horse,	1	1

	s.	d.
For every common car, or cart, used as a chaise marine - -	1	1
Sedan chair - -	0	6½
Car, - - -	0	6½
Dray, - - -	0	10
Horse passing under carriages, over the above rates, -	0	3
Passenger, -	0	1
Riding horse or mule, -	0	6
Car load of hay, -	0	6½
Do. of straw, -	0	3
Do. of stones, -	0	1
Do. of Dung, -	0	1
Do. of sand, -	0	1
Do. of turf, } free.		
Do. of milk, } free.		
Do. of furze, } free.		
Ass, - -	0	1½
Cow, bull, bullock, or heifer,	0	3
Calf, - -	0	1
Sheep, - -	0	1
Lamb or kid, -	0	0½
Goat, -	0	1
Pig, - -	0	1½
Cow or horse hide, -	0	1
Calf or sheep skin, -	0	0½
Dozen of lamb skins, -	0	3
Piece of cloth or flannel,	0	0½
Piece of linsey or linen,	0	0½
Tub of butter exceeding fifty-six pounds,	0	3
Do. do. under fifty-six pounds,	0	1½
Small crock or basket,	0	1
Basket of fowls or eggs,	0	0½
Small bag of meal, -	0	0½
Puncheon of liquor, -	0	10

	s.	d.
For every hogshead of liquor, -	0	5
Barrel of do. -	0	3
Half barrel of do.	0	1½
Ten gallon keg of do. -	0	1
Empty hogshead, -	0	1
Empty barrel, half barrel, or keg,	0	0½
Crate of ware, -	0	6
Small do. -	0	4
Hundred weight of dry goods,	0	2
Barrel of wheat, -	0	2½
Do. of barley or oats,	0	2
Do. of potatoes, -	0	2
Do. of peas or beans, -	0	2½
Do. of malt, -	0	1½
Do. of coal, -	0	2
Do. of salt, -	0	2
Do. of lime, roach, or slack,	0	2
Ton of round or square timber,	1	6
Dozen of boards, -	0	6½
Hundred of four-feet staves,	0	6
Do. of three-feet staves,	0	4
Do. cwt. of iron, -	0	2
Stone or bag of feathers,	0	1
Do. do. of wool, -	0	1
Car load of poles, -	0	6½
Do. of timber. -	0	6½
Load of sheaf of corn, -	0	3
Hundred of cheese, -	0	1
Side of bacon, -	0	1
Ham or hand, -	0	0½
Hundred of herrings, -	0	1
Carcase of beef, -	0	4
Thousand of slates, -	0	6½
Pair of mill-stones, -	5	5
Hundred of bricks, -	0	2

	s.	d.
For every Dozen of rabbit skins, - -	0	3
Hundred of oysters, - -	0	1
Salmon, - -	0	1½
All persons carrying kish, basket, sack, load, or pack, not already rated, - -	0	1

Act deemed and to be taken a public Act, § 5.

Clause of the Act of Parliament referred to in NOTE, *p.* 30, *empowering Proprietors of Ferries to erect Bridges and take Toll for the same.*

AND be it further enacted, that it shall be lawful for any person or persons, who now have or shall hereafter have, any ferry over any river, *excepting cities and towns corporate*, to erect and support a bridge at his or their own expense, over such river, in the place of such ferry, and to take and receive for passing such bridge, such Toll, and no more, as they are entitled to receive for passing such ferry, so that such bridge shall not obstruct the navigation of such river; and that such Tolls shall be recoverable in like manner, and under such penalties for refusing or evading to pay the same, by any Justice of the Peace, as is prescribed by an Act passed in the thirtieth year of his present Majesty's reign, entitled "*An Act for building a bridge over the river Loughfoyle, in the city of Londonderry, and the suburbs thereof*," and that the Grand juries of the counties (if they shall think fit) may purchase the properties of such bridges, in order to open the same, free of Toll, for the benefit of the public.—36 G. III. c. 55, § 57.

The same power of erecting bridges instead of ferries, is given by the following Acts, but with this proviso, "*Provided always that nothing herein contained shall extend to*

ferries in cities or towns corporate."—5 G. III. c. 14, § 18, P.—13 and 14 G. III. c. 32, § 20, P.—19 and 20 G. III. c. 22, P.

SALE BY SAMPLE.

The Bailiffs, Burgesses, and Commonalty of the Borough of Tewkesbury, in Co. Gloucester, v. *Diston.*

THIS was an action *on the case.* The first count of the declaration stated the plaintiffs to be possessed of a market in Tewkesbury, holden, &c. for the buying and selling corn, &c., and other goods usually sold in markets, and that by reason thereof, they were entitled, by way of Toll, to a *peck*, viz.—two gallons and one quart for every 48 bushels of corn, &c. brought into the said market to be sold, and there sold, on a market day, not being corn, &c. sold by any freeman of the borough, nor of any person legally exempt from the payment of the Toll, each bushel containing 9 gallons, and so in proportion, for a greater or lesser quantity than 48 bushels. It then alleged that the defendant, fraudulently intending to injure the plaintiffs and to defraud them of their Toll, did, on a market day, &c., he not being a freeman of the borough, &c., wrongfully and fraudulently buy in the market of Tewkesbury, from one John Dobbins, he not being a freeman, &c., 96 bushels of wheat by sample, that is to say of the same and like quality with a small parcel of wheat which the said *J. Dobbins* then and there produced to the defendant, as and for a sample of the said wheat so bought as aforesaid, the said wheat, or any part thereof, not being in the said market at the time of the sale, nor brought by the said *J. Dobbins* into the said market, to be there sold; and the defendant, well knowing that the said

last mentioned wheat had not been brought into the said market to be there sold, and was not in the said market at the time of his buying thereof; whereby the plaintiffs were prevented from taking their Toll out of the said wheat as they would have done, if the said wheat had been brought and placed in the said market to be there sold, and had been there sold and lost, and were deprived of the same. The 2d *count* only varied from the first, by alleging that 96 *bushels* of wheat were bought by sample, without any explanation of the word sample, and were delivered to the plaintiff in *Tewkesbury*. Third *count* claimed Toll upon all corn brought into the market to be sold, and there sold, on any market day, and delivered within Tewkesbury, and alleged the sale by sample in the same mode as the second count, and was, in other respects, similar to the two preceding counts.—The fourth count resembled the last in the claim of Toll, and the mode of sale by sample, and alleged that the corn in question had not been brought into the market to be sold, and was not in the market when bought by the defendant, but was to be delivered afterwards to the defendant on a future day agreed upon between the defendant and the said *John Dobbins*.

The defendant pleaded the *general issue;* the cause came on to be tried at the Summer Assizes of Gloucester, 1803, when a special verdict was found for the plaintiffs, with 1*s*. damages and 40*s*. costs, but subject to the opinion of the Court of King's Bench.

After many elaborate arguments in the Court above, it was decided in Easter Term, 1805, that an action on the case by the owners of a market who had a prescriptive right to Toll on all corn brought into the market to be sold, and there sold, alleging that the defendant, intending to deprive them of their Toll, fraudulently bought corn in the market, by *sample*, knowing that the commodity was not there in *bulk* at the time of the sale, is not sustained by

evidence of the mere fact of such purchase by *sample* in the market, though with knowledge of the plaintiff's claim of Toll coupled with fact of not paying the Toll on demand afterwards when the corn was delivered to the defendant in the same borough, but *out* of the market, for *non constat*, that the corn would otherwise have been brought into the market, or that the defendant did any act to induce the owner of it not to bring it there in the first instance—neither will the fact of such purchase by *sample* in the market, though coupled with the subsequent delivery *out* of the market, sustain a count for Toll as for corn brought into the market and then sold.—Vide 6 East. 2 Smith Rep.

IN EXCHEQUER CHAMBER—LONDON.

In Error—Sale by Sample.

Hill, v. Smith.

THIS question arose out of two special justifications pleaded to a declaration in trespass for taking wheat and other grain of the plaintiff's, and converting the same to the defendant's use. The second plea stated, as to the taking 30 pints of wheat, part, &c.—that the city of *Worcester* is an ancient borough or city, and the citizens or burgesses have immemorially been a body corporate by different names, until the charter of 19 Jac. I. incorporating them by the name of mayor, aldermen, and citizens of *Worcester;* and that the said citizens or burgesses from time immemorial until that charter, and the mayor, aldermen, and citizens since, have had and held, &c., and by right ought to have and hold a market in said city, every Saturday, (except when Christmas-day happens on Saturday;) for the buying and selling of wheat, &c., and during all the time aforesaid

have, at their own costs, repaired the *highways* of said market, &c.; and by reason of the premises have immemorially taken, for their own use, a certain reasonable Toll, viz.—one pint of wheat, corn measure, for every three bushels of wheat, reckoning the same according to the quantity sold and delivered as such in the said city or borough, sold in the market by sample, and afterwards brought into the said borough to be delivered to the buyer, to be paid by the seller of such wheat, (except in certain cases specified, which are not material,) and in case of non-payment of such Toll, after reasonable request, &c., the corporation have immemorially taken a reasonable distress for the same, &c. The plea then alleged that the plaintiff, on a certain market day, sold to one T. Hull 31 bags, as for 3 bushels of wheat in each bag, by sample, to be delivered in the said city, which said wheat, of which the said 30 pints were parcel, &c. was afterwards brought to be delivered to T. Hull in said corn market, in the said city, &c., (negativing its coming within any of the excepted cases.) That the defendant, as servant to the corporation, requested the plaintiff, then and there having the possession of the said wheat, to pay Toll for the same, being in the said market place, within the said city, and, upon his refusal, took the said 30 pints, for and in name of a distress for the said Toll. The third plea differed from the first only in introducing another case of exception, and in stating, that in case of *non-payment* of such Toll, the corporation had immemorially taken the same out of the wheat so sold by sample in the said market, and afterwards brought into the said borough or city to be delivered to the buyer.

The plaintiff replied to each of these pleas *de injuria*, and traversed the prescription.

After very elaborate arguments, it was held that a prescription for Toll, in respect of goods sold by sample in a market, and afterwards brought into a city to be deli-

vered, cannot be supported.—Also that a claim of *Toll-thorough* cannot be supported without shewing a beneficial consideration moving to the person of whom it is claimed. —4 Taunt. Rep. 520.

TRUEMAN *v.* WALGHAM AND KEY, C. B.
2 WILS. 296.

IN trespass the plaintiff declares that the defendant, on the 5th of *November*, 1764, with force and arms, &c. at *Gainsbrough*, in the county of *Lincoln*, stopped the waggon of the plaintiff drawn by his cattle in and along the king's highway there, and seized and took from the cattle drawing the waggon, the geers of the plaintiff, viz.—one pair of his iron geers, and carried away, kept, and detained the same, and also that the defendants, on the 5th of *November*, 1764, with force and arms, at *Gainsbrough* seized, took, and carried away other geers of the plaintiff, to wit, one pair of iron geers at *Gainsbrough* lately found and converted, and disposed thereof to their own use, to the plaintiff's damage of £10.

Curia: This is a prescription for a Toll thorough the king's highway, the streets of *Gainsbrough*; which cannot be taken without a good consideration be alleged; the reason is, because it is to deprive the subject of his common right and inheritance, to pass through the king's highway, which right of passage was before all prescriptions. *Moore*, 574, 575. Toll-traverse, or for going through a man's private land, may be prescribed for without any consideration; and payment time out of mind is sufficient, and will support the prescription. In the case at bar, Toll is demanded of the subject in the King's highway for passing there, the subject ought to have a benefit for paying it; the consideration here, is the repair-

ing, cleansing, and maintaining *divers and many streets in Gainsbrough*, not for repairing, &c. all the streets there; how, therefore, can we say that the plaintiff's waggon was passing through any street repaired by the lord of this manor, the waggon might be passing over some street not repaired by him when the distress was taken, for any thing that appears to the contrary, and we must take it that it was so: we cannot let the defendant have judgment upon this record.

Courts are exceeding careful and jealous of these claims of right to levy money upon the subject; these Tolls began and were established by the power of great men. The defendant's plea is as bad as can be, the lord has artfully tried to make it doubtful, whether this be a Toll-thorough or Toll-traverse, for he has confounded them together; the consideration he claims it for, is not mending the highway, and he would have us believe it is for passing through his own manor or land. The judgment was arrested upon the merits *per totam curiam.*

CASTLEBAR QUARTER SESSIONS,

Jan. 14, 1829.

The first civil bill case called on, was at the suit of Hugh Nighland against Patrick Nester and John Philbin, Toll-gatherers, for detaining and locking up in a store two baskets of potatoes for Toll and Custom.

The defendants attorneys, Mr. Isidore Burke, Mr. Roland, and Mr. Joseph O'Donnell, objected to the barrister's going into the case, on the ground, that the process was not properly filled, in as much as the market was not set forth.

Mr. Courtney, (barrister,) for the defendant, replied

to the objection; he contended that the process had been sufficiently explicit, and that they had put them entirely on their defence. The objection was persevered in by the attorneys for the plaintiff, who were replied to by Mr. Courtney and Mr. Neal Davis, who quoted several Acts of Parliament in support of their arguments.

The presiding barrister thought that the defendants were not sufficiently put upon their trial; but even if they were, he conceived that it should be in a more solemn court than this that corporations should be put upon their trial: he had made up his mind, and would either dismiss them on the merits or strike them out.

Mr. Courtney.—Are you to say from that bench, that the poor people must pay whatever Toll is demanded of them, and that they are to have no redress because they possess not the means of carrying their case before a higher tribunal? Suppose that I ride a horse into town with a knot of red riband in his head, and that a Toll-man comes up, and says, you must pay 10*s.*, and that I, to avoid altercation, paid the demand at the moment, am I to have no remedy, because you would not try a Toll question? I again ask, does your worship proclaim that your court has no power to try the right to Toll? Other barristers exercised that right; Toll is not now levied in Ballina, occasioned by your worship's decrees, why then not try cases affecting Castlebar? I admit, the proprietor of Tolls is a gentleman holding an official situation, and perhaps those gentlemen holding official situations, who are in the habit of feasting at his table, may there find *pickled pork and potatoes* detained for Toll.

Barrister.—I do not think I have been well treated; I was left in the dark; it seems that the right to Toll is not disputed, but it is for *excessive* Toll the action is brought.

Mr. Courtney.—Certainly, your worship, we do not know whether Mr. Gildea has or has not a right to Toll,

but we go on the ground, that no law or right can justify illegal or excessive Toll.

Barrister.—If it be the former, I will not try it; if it be the latter, it is not properly brought. I therefore dismiss the case without prejudice.

In the second case the process was so filled as to meet every objection urged in the former case: his worship rescinded his decision, and permitted the first case to be proceeded upon.

EVIDENCE.

Bryan Nighland, sworn. Knows Hugh Nighland.—Is his brother.—Recollects his brother bringing potatoes into the market, selling them at $2\frac{3}{4}d.$ per stone.—His brother paid 1*d.* Toll for weighing them, and was about giving the potatoes up to the purchaser, when Pat Nester came up, and said he would not let them go until he got his penny custom.—He detained the potatoes, and locked them up in his store, and would not give them unless he got the 1*d.* Custom.

Cross-examined.—Potatoes were seized last Saturday week at the crane of Castlebar—were sold to a woman from *Shraughan.*—He swears that the woman demanded, and would not get them.—Went there himself to buy a bag of oats and sell his pigs.—His brother always paid Toll, but did not that day, because they heard that Mr. Cavendish said it was not right.—He saw on that day that Mr. Cavendish bought potatoes, and they only charged him 1*d.*, and gave out they would only charge 1*d.* in future; but when Mr. Cavendish went away they charged 2*d.*

Mr. Courtney.—And we *will prove that they took from others what they would not take from him on that day.*

DEFENCE.

Serjeant Doig was examined, to prove that there were Toll-boards up in various parts of the town.—To the best of his opinion there was no name subscribed to them.

No other evidence was produced for the defence, nor was any thing advanced to shew the right to Toll.

Barrister.—The case has not been defended, and I must pronounce a decree.

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